



Citation: *MJ v Minister of Employment and Social Development and The Estate of ED*, 2022 SST 717

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: M. J.

Respondent: Minister of Employment and Social Development

Added Party: The Estate of E. D.

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated December 1, 2021 (issued by Service Canada)

Tribunal member: Jackie Laidlaw

Type of hearing: Teleconference

Hearing date: July 4, 2022

Hearing participants: Appellant
Witness

Decision date: July 6, 2022

File number: GP-22-15

Decision

[1] The appeal is dismissed.

[2] The Appellant, M. J., isn't eligible for a Division of Unadjusted Pensionable Earnings (DUPE or Credit Split). This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant was the common-law partner of E. D. from September 1, 2010 to April 3, 2017. The Appellant did not apply for the Credit Split until August 4, 2021. Unfortunately Mr. D. died in September 2019, and had not agreed in writing to waive the four year time limit.

[4] The Appellant says she was nursing Mr. D. before his death, then grieving for a few years after. That is why she did not apply earlier.

[5] The Minister says she is not eligible for the DUPE as she did not apply within four years of separating, and her former partner did not agree in writing to waive the four year regulation.

What the Appellant must prove

[6] For the Appellant to succeed, she must prove she applied for the DUPE within four years after she and Mr. D. separated.

Reasons for my decision

[7] The Appellant applied for a Survivor's Pension. The Minister denied the application on January 7, 2020¹. The denial letter clearly outlined she was entitled to

¹ GD 2 24

apply for the DUPE. The Minister provided the accompanying fact sheet on how to apply and the rules surrounding the application for a DUPE.²

[8] The Appellant applied for a DUPE on August 4, 2021. The Statutory Declaration of Common-law Union said she and Mr. D. separated on April 1, 2017. At the hearing, the Appellant confirmed the date of separation was actually April 3, 2017. This is the date Mr. D. moved out from their home in Port Moody to Powell River.

[9] Because there was no written agreement between the Appellant and Mr. D., she had to apply for a DUPE within four years of the date of separation.³ This means she would need to apply by April 3, 2021, but she only applied August 4, 2021.

[10] It is unfortunate that neither party thought of applying for the DUPE earlier. I completely understand that they were more consumed by his care through a difficult period.

[11] As it stands, the Appellant applied too late for the DUPE, and I do not have the power to change the legislation on compassionate grounds, or for any reason.

Conclusion

[12] I find that the Appellant isn't eligible for a Division of Unadjusted Pensionable Earnings.

[13] This means the appeal is dismissed.

Jackie Laidlaw
Member, General Division – Income Security Section

² GD 3

³ See subsection 55.1(c) of the *Canada Pension Plan*.