

Federal Court



Cour fédérale

Date: 20180308

Docket: T-784-17

Citation: 2018 FC 275

Ottawa, Ontario, March 8, 2018

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

BARBARA A. DALGLEISH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2014, Ms Barbara Dalglish was working in Bobcaygeon, Ontario as a nurse. In September 2014, she decided to stop working due to illness, submitted a claim for Employment Insurance, and received EI benefits. She returned to work briefly in early 2015, but by March 2015 she decided to retire and apply for Canada Pension Plan benefits. She asked to receive CPP benefits as soon as she qualified for them.

[2] Ms Dalglish did not realize, nor was she informed, that she was entitled to retroactive CPP benefits to June 1, 2014. As a result, there was an overlap between the period for which she was paid CPP benefits and the period during which she received EI, allegedly resulting in an overpayment to her in the amount of \$4,155.00. Ms Dalglish asked the Canada Employment Commission to reconsider its overpayment claim, but it did not change its position. Ms Dalglish appealed to the General Division of the Social Security Tribunal (SST), pointing out that the CPP application forms she filled out did not alert her to the potential consequences of receiving CPP benefits retroactively to the period when she was receiving EI payments. She submitted that requiring her to repay the alleged overpayment would cause her financial hardship.

[3] The General Division acknowledged that Ms Dalglish had not received complete information about the consequences of receiving both CPP and EI benefits, and that repaying the alleged excess would cause her hardship. Still, the General Division believed that this result was a consequence of the *Employment Insurance Regulations*, SOR/96-332 and that it had no discretion over the matter. In essence, CPP benefits are characterized as earnings (under s 35(2)(e) of the Regulations) and allocated to the period for which they were payable (according to s 36(14)), in this case, beginning on June 1, 2014 (see Annex for provisions cited). In other words, the Regulations stipulated that Ms Dalglish's CPP benefits should be payable during the period when she was receiving EI benefits, even though she had never made a request to that effect, and was never informed of the consequences.

[4] Ms Dalglish appealed to the Appeal Division of the SST arguing that the General Division had erred in its interpretation of the Regulations. However, the Appeal Division denied Ms Dalglish leave to appeal on the basis that she had no reasonable chance of success.

[5] Ms Dalglish submits that the Appeal Division's decision was unreasonable because it failed to take account of the fact that she was paid CPP benefits retroactively to June 1, 2014, even though she had never requested a retroactive payment, and was never given an opportunity to make an informed choice. Ms Dalglish asks me to quash the Appeal Division's decision and order another panel to reconsider her request for leave to appeal.

[6] While I sympathize with Ms Dalglish's situation, and commend her on her well-organized presentation to the Court, I cannot grant the relief she seeks. The Appeal Division's decision was not unreasonable in light of the Regulations in issue. I must, therefore, dismiss this application for judicial review.

[7] The sole issue is whether the Appeal Division's decision was unreasonable.

II. Was the Appeal Division's decision unreasonable?

[8] Ms Dalglish argues that the Appeal Division failed to appreciate that she never requested retroactive payment of her CPP benefits. Further, had she been informed of the consequences of retroactive payment, she would have declined, both because of the impact on her EI status, and because she would have been entitled to a higher rate of payment had she delayed receipt until the spring of 2015.

[9] Regrettable as it may be for Ms Dalglish, I cannot conclude that the Appeal Division's decision was unreasonable. Ms Dalglish requested that she begin to receive CPP benefits as soon as she qualified for them. In her case, this amounted to a request to receive benefits as of June 1, 2014, 11 months prior to her application and during a period that overlapped with her receipt of EI benefits. That consequence is a product of duly enacted laws and regulations and beyond the remedial authority of this Court on an application for judicial review. I do agree with Ms Dalglish, however, that applicants for CPP benefits should perhaps be provided more information about the implications that can arise from retroactive payments.

[10] I cannot conclude that the Appeal Division's decision was unreasonable.

III. Conclusion and Disposition

[11] The Appeal Division's decision denying Ms Dalglish's request for leave to appeal was not unreasonable in light of the laws, regulations, and evidence in issue. I must, therefore, dismiss this application for judicial review. There is no order as to costs.

JUDGMENT IN T-784-17

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed.

There is no order as to costs.

"James W. O'Reilly"

Judge

ANNEX

*Employment Insurance
Regulations, SOR/96-332*

*Règlement sur l'assurance-
emploi (DORS/96-332)*

Determination of Earnings for
Benefit Purposes

Détermination de la
rémunération aux fins du
bénéfice des prestations

35(2) Subject to the other provisions of this section, the earnings to be taken into account for the purpose of determining whether an interruption of earnings under section 14 has occurred and the amount to be deducted from benefits payable under section 19, subsection 21(3), 22(5), 152.03(3) or 152.04(4) or section 152.18 of the Act, and to be taken into account for the purposes of sections 45 and 46 of the Act, are the entire income of a claimant arising out of any employment, including

35(2) Sous réserve des autres dispositions du présent article, la rémunération qu'il faut prendre en compte pour vérifier s'il y a eu l'arrêt de rémunération visé à l'article 14 et fixer le montant à déduire des prestations à payer en vertu de l'article 19, des paragraphes 21(3), 22(5), 152.03(3) ou 152.04(4), ou de l'article 152.18 de la Loi, ainsi que pour l'application des articles 45 et 46 de la Loi, est le revenu intégral du prestataire provenant de tout emploi, notamment :

...

[...]

(e) the moneys paid or payable to a claimant on a periodic basis or in a lump sum on account of or in lieu of a pension;

e) les sommes payées ou payables au prestataire, par versements périodiques ou sous forme de montant forfaitaire, au titre ou au lieu d'une pension;

Allocation of Earnings for
Benefit Purposes

Répartition de la rémunération
aux fins du bénéfice des
prestations

...

[...]

36 (14) The moneys referred to in paragraph 35(2)(e) that are paid or payable to a claimant on a periodic basis shall be

36(14) Les sommes visées à l'alinéa 35(2)e) qui sont payées ou payables au prestataire par versements périodiques sont réparties sur

allocated to the period for which they are paid or payable. la période pour laquelle elles sont payées ou payables.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-784-17

STYLE OF CAUSE: BARBARA A. DALGLEISH v ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 13, 2017

JUDGMENT AND REASONS: O'REILLY J.

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APPEARANCES:

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Faiza Ahmed-Hassan FOR THE RESPONDENT

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