

Citation: *B. E. v. Minister of Employment and Social Development*, 2015 SSTAD 32

Appeal No: AD-14-600

BETWEEN:

**B. E.**

Applicant

and

**Minister of Employment and Social Development  
(formerly Minister of Human Resources and Skills Development)**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION  
Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Valerie Hazlett Parker

DATE OF DECISION: January 8, 2015

## **DECISION**

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal is refused.

## **INTRODUCTION**

[2] The Appellant applied for and was granted a *Canada Pension Plan* retirement pension. In calculating the amount payable the Respondent included a Division of Unadjusted Pensionable Earnings (DUPE). The Applicant and his former wife had separated and an application for a DUPE had proceeded on an uncontested basis. The Applicant disagreed with the application of the DUPE in his case. He appealed the Respondent's calculation to the General Division of this Tribunal. On November 10, 2014 the General Division dismissed his appeal on the written record.

[3] The Applicant sought leave to appeal to the Appeal Division of the Tribunal, claiming that the General Division breached principles of natural justice, that he disagreed with the General Division decision and put forward compassionate grounds for relief to be given to him.

[4] The Respondent did not respond to this application.

## **THE LAW**

[5] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has also found that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[5] Section 58 of the *Department of Employment and Social Development Act* sets out the only grounds of appeal that may be considered to grant leave to appeal a decision of the General Division (this is set out in the Appendix to this decision).

[6] In order to be granted leave to appeal, I must be satisfied that the Applicant has presented a ground of appeal that has a reasonable chance of success on appeal.

## **ANALYSIS**

[7] The Applicant contended, first, that leave to appeal ought to be granted because the General Division failed to observe the principles of natural justice. He argued that his claim had been ongoing for a long time, a large file was presented to the Tribunal, and he had repeatedly presented his position. The Applicant also argued that the Tribunal website said that he had the right to a face to face appeal.

[8] Natural justice is concerned with the proper administration of laws, ensuring that parties can fully present their case before the Tribunal, and that the claimant has his matter decided by an independent and impartial decision maker. It does not guarantee every party to every dispute a hearing in person. The *Social Security Tribunal Regulations*, in section 21, specifically provide that hearings may be conducted on the written record, by teleconference, by videoconference or other means of telecommunication, or in person. The website does not promise a face to face hearing to all parties.

[9] In this case, the Applicant had a number of opportunities to present his case in writing to the tribunal. He was provided with notice that the hearing would proceed on the written record, and the reason for the Member's decision to proceed in this fashion. The Applicant did not contest these reasons. The fact that the litigation was protracted, and that the Applicant repeated his position to the Tribunal did not persuade me that any principles of natural justice had been breached by the General Division. Thus, this ground of appeal does not have a reasonable chance of success on appeal.

[10] The Applicant also argued that he was in poor health, and difficult financial circumstances. He was the main caregiver to his wife when they were married as she was chronically ill. He would like the money he contributed to the CPP while he worked returned to him. While these circumstances are tragic, they do not fall within the grounds of appeal that can be considered under the *Department of Employment and Social Development Act*. This Act does not provide that any relief can be granted on compassionate grounds.

Therefore, no ground of appeal with a reasonable chance of success is disclosed by these arguments.

## **CONCLUSION**

[11] The Application is refused because the Applicant has not presented a ground of appeal that has a reasonable chance of success on appeal.

*Valerie Hazlett Parker*

Member, Appeal Division

## **Appendix**

### **Department of Employment and Social Development Act**

58. (1) The only grounds of appeal are that

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.