

Citation: *J. G. v. Minister of Employment and Social Development*, 2015 SSTAD 503

Date: April 20, 2015

File number: AD-15-157

APPEAL DIVISION

Between:

J. G.

Applicant

and

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

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

Decided on the Record on April 23, 2015

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On March 04, 2015 the General Division of the Social Security Tribunal of Canada, (the “Tribunal”), determined that the Applicant was not entitled to a *Canada Pension Plan*, (“CPP”), survivor pension. The Applicant has filed an application for leave to appeal, (the “Application”), with the Appeal Division of the Tribunal. She submits she is entitled to a survivor’s pension as at the time of the deceased contributor’s death she was his common-law spouse.

ISSUE

[3] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[4] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development, (“DESD”) Act*, “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal.”

[5] Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

[6] The statutory provisions that govern the payment of a survivor’s pension are found at paragraph 44(1)(d) of the CPP Act. Paragraph 44 (1)(d) provides “that a survivor’s pension shall be paid to the survivor of a deceased contributor who has made contributions for not less than the minimum qualifying period, if the survivor, (ii) (A) had at the time of the death of the contributor reached thirty-five years of age.”

[7] Common-law spouses are covered by subsection 42(1) which defines and includes the survivor in relation to a deceased contributor as (b) a person who was the common-law partner of the contributor at the time of the contributor's death. "Common-law partner" is a defined term in the CPP Act. Ss. 2(1) defines "common-law partner" as "in relation to a contributor, means a person who is cohabiting with the contributor in a conjugal relationship at the relevant time, having so cohabited with the contributor for a continuous period of at least one year. For greater certainty, in the case of a contributor's death, the "relevant time" means the time of the contributor's death."

SUBMISSION

[8] The Applicant submitted that the General Division Member erred when she found she was not a common-law partner of D. P. S. and, therefore, not entitled to a CPP survivor benefit. The Applicant contends that the General Division erred in two ways. First, the General Division committed a breach of natural justice; and second the General Division based its decision on an erroneous finding of fact which it made in a perverse or capricious manner or without regard for the material before it. In short, the Applicant relies on DESD ss. 58(1)(a) and (c) to ground the Application.

ANALYSIS

[9] The Applicant indicates that, if successful on the Application, she would rely on certain additional information to support her claim that at the time of his death she was the common-law spouse of D. P. S. These documents are a copy of a will made in favour of the Applicant and a letter from the Applicant's sister supporting the existence of the common-law relationship.

[10] Two issues are live before the Tribunal, which must decide whether the General Division committed a/or any breach of natural justice and, also whether the General Division Member disregarded pertinent information. The Tribunal must also decide whether or not the General Division Member disregarded the material the Applicant submitted as proof of her status as the common-law spouse of the deceased contributor.

The Allegation of Bias

[11] The Applicant levelled several charges of bias against the General Division Member. First, she claims that the General Division Member displayed bias in her view of the relationship between the Applicant and her representative. The Applicant also alleged that the General Division Member ignored pertinent documents; favoured the Respondent; and took a culturally self-centred view of the actions that the Applicant took in relation to D. P. S.'s funeral arrangements.

[12] It is clear that credibility was an issue in this appeal. The Applicant had the onus to establish that at the relevant time she had been co-habiting with the deceased contributor continuously for at least one year. The General Division Member assessed the Applicant's evidence against the criteria set out by the Supreme Court of Canada in *M v. H.*¹ The Member found that the Applicant had failed to meet her onus.

[13] The Applicant takes issue with the General Division Member's description of the Applicant's demeanour and the conduct of her representative during the hearing. The Tribunal notes that the General Division Member, as the "first-instance, trier of fact", is best placed to assess credibility. The mere levelling of an accusation of bias is not sufficient to allow the Tribunal to make such a finding. In the Applicant's case, the General Division Member provided a clear rationale for her conclusions. This included the Applicant's prior history of being less than straightforward with Government agencies. The Tribunal finds that the allegation is not made out.

[14] In the same vein, the Applicant's allegation that the General Division Member ignored pertinent documents because of bias is also not made out. In her decision, particularly at paragraphs 31 and 32, the General Division Member considered the evidence of the post-divorce relationship; the photographs of the Applicant and the deceased at various functions as well as the apparent lack of communication between the Applicant and the deceased's brother. That the General Division Member did not come to the conclusion that the Applicant

¹ *M v. H.* [1999] 2 SCR 3.

would have liked cannot support the allegation that the General Division Member arrived at her conclusions because of bias.

[15] Further, even if the General Division Member had no knowledge of the funeral customs of the Applicant's culture this, in and of itself, cannot support an allegation of bias. The Applicant had the onus of establishing that she was D. P. S.'s common-law partner at the time of his death. She provided utility bills, insurance and other documents in an effort to establish that status. The Tribunal finds that it was also incumbent upon her to establish the cultural characteristics she alleges. Even so, the Tribunal finds that the General Division Member's deduction concerning D. P. S.'s brother's receipt of the CPP death benefit is, in all the circumstances, reasonable as the Applicant's ignorance of that fact is incompatible with the type of relationship she states she enjoyed in the family.

[16] The Tribunal also rejects the Applicant's allegation that the General Division Member favoured the Government (i.e. the Respondent). Other than making this bald accusation, the Applicant has not shown how the General Division Member favoured the Government or otherwise indicated a bias on her part. For all of the above reasons, the Tribunal finds that the allegations of bias are not supported and cannot ground the appeal.

Did the General Division Member disregard pertinent information?

[17] The Applicant has submitted that the General Division Member ignored pictures of herself and D. P. S. at the 2010 wedding of his nephew. An examination of the decision does not support this allegation. At paragraph 32 of the decision, the General Division Member expressly turned her attention and discusses the significance of the photographs and evidence concerning the post-divorce relationship between the Applicant and D. P. S. Thus the allegation is not made out and the Tribunal finds that the Application cannot be granted on this basis.

CONCLUSION

[18] The Applicant alleged that the General Division breached natural justice as well as based its decision on an erroneous finding of fact which it made in a perverse or capricious manner or without regard for the material before it. On the basis of the foregoing, the Tribunal

finds that these allegations have not been made out. Therefore, the Tribunal is not satisfied that the Applicant's appeal would have a reasonable chance of success.

[19] The Application is refused.

Hazelyn Ross
Member, Appeal Division