

Citation: *D. F. v. Minister of Employment and Social Development*, 2015 SSTAD 541

Appeal No. AD-15-158

BETWEEN:

**D. F.**

Applicant

and

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

Respondent

and

**F. G.**

Added Party

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

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SOCIAL SECURITY TRIBUNAL MEMBER: Hazelyn Ross

DATE OF DECISION: April 30, 2015

## **DECISION**

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

## **INTRODUCTION**

[2] By a decision issued on December 31, 2014, the General Division determined that the Applicant did not have care and control of his children after April 2005. The General Division further determined that, as of April 2005, the Applicant was disentitled to receive disabled contributor's child benefit payments. The Applicant seeks leave to appeal the General Division decision. The Social Security Tribunal, ("the Tribunal") received the application for leave, ("the Application") on March 27, 2015.

## **ISSUE**

[3] At issue before the Tribunal is whether the Appeal has a reasonable chance of success.

## **THE LAW**

[4] Appeals of a General Division decision are governed by sections 56 to 59 of the *Department of Employment and Social Development Act*, ("DESD Act"). Subsections 56(1) and 58(3) govern the grant of leave to appeal, providing that "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."

## **SUBMISSIONS**

[6] The Applicant submitted that the Application should be granted because the General Division Member breached section 58 of the DESD Act. The errors the Applicant alleges that were made include,

- a. Pre-judging the outcome of the appeal; forming an adverse opinion prior to the hearing; and relying on documents that the Tribunal stated ought to be excluded from the hearing materials.
- b. Giving undue weight to the evidence of the Added Party while disregarding the testimony and evidence of witnesses that were supportive of the Applicant.
- c. He also alleged a breach of natural justice stemming from a denial of an opportunity to make full answer and defence, in that he was denied an opportunity to respond.
- d. In addition, the Applicant submits that the lawyer acting for the Added Party, but who was not retained, broke the law; as did the Added Party.
- e. Lastly, he submits that the moneys paid to him were used to support his children.

## **ANALYSIS**

### **Did the General Division Member prejudge the outcome of the appeal?**

[7] The Applicant takes the position that the General Division Member prejudged the appeal by admitting late submissions from the Added Party. The Applicant maintains that admitting the documents contravened the Tribunal's own edict that they were not to be admitted. The Tribunal finds that the Applicant's position is not supported. The Tribunal issued no such prohibition. Instead, the Tribunal's clear position, communicated to the parties, is that documents that are submitted after the deadline date for submissions would be considered at the discretion of the Tribunal Member who is considering the appeal. The Applicant has misunderstood the Tribunal's position. Thus, his allegation cannot be maintained on this basis.

[8] Furthermore, there is no evidence on the record to support the Applicant's position that the General Division Member had prejudged the outcome of his appeal. The decision, which is some seventeen pages long, contains a full discussion of the evidence, both oral and documentary, particularly as that evidence relates to the central question of "care and control" of the children and the Applicant's place of residence at the relevant times.

[9] Accordingly, the Tribunal finds that leave to appeal cannot be granted on the basis that the General Division Member was biased towards the Applicant.

**Did the General Division Member give undue weight to the evidence of the Added Party?**

[10] The Applicant charges that the General Division Member disregarded the testimony of supportive witnesses and preferred the testimony of the Added Party. The Tribunal finds that while true on one level, the General Division Member provided a reasonable and defensible reason for doing so. The General Division Member spent considerable time discussing the testimony of the witnesses as well as the documentary evidence. His conclusions concerning the witnesses' testimony are set out at paragraph 85 of the decision. The General Division Member did not find the testimony of the Applicant's witnesses to be helpful. Instead, he relied mainly on documents provided by uninterested, third parties such as the divorce papers and the statement from the rental office at the X Street apartment. On the basis of the General Division Member's findings concerning the credibility of the Applicant and his supportive witnesses, the Tribunal rejects the Applicant's charges. Accordingly, they cannot form the basis of an appeal.

**Did the General Division Member deny the Applicant the opportunity to make Full Answer and Defence?**

[11] The Applicant alleged a breach of natural justice in that he was not allowed time to respond. Based on the Record, the Tribunal finds that the alleged breach did not take place. The Applicant was given ample opportunity to present his case. He made an opening statement; answered questions put to him by the General Division Member; and made a closing statement. What the Applicant is really complaining about is that the General Division Member did not allow him free range to interrupt the Added Party and the witnesses or to go on speaking indefinitely on tangential matters. In the Tribunal's view, limiting a witness' conduct during a hearing to pertinent matters or asking a witness to focus their testimony on the essential issues does not automatically translate into denying that witness the opportunity to be heard.

[12] The central issue in this appeal turned on the Applicant's place of residence during the years for which he received a disabled contributor's child benefit. The General Division Member was concerned with obtaining information that related to that issue. On the face of the record and the decision, the Tribunal is not persuaded that the General Division Member denied the Applicant a full opportunity to present his arguments. Accordingly, the Tribunal finds that the General Division Member did not commit the alleged breach of natural justice and rejects the Applicant's submission in this regard.

### **The Applicant's Other Allegations**

[13] The Applicant levelled a number of allegations against a lawyer acting for the Added Party. These allegations are best handled in the forum that the Applicant indicates he has complained to. With respect to the alleged breaches of the law by the Added Party, again these are not matters that the Tribunal can address.

[14] The Applicant also contends that the money he received was spent on his four children. This is not relevant. The question is not how he spent the money; rather it is his entitlement to that money that is at issue.

### **CONCLUSION**

[15] The Applicant was found to not be entitled to receive disabled contributor's child benefits. He was required to repay the moneys he received. His appeal to the General Division was not successful. That the Applicant disagrees with the conclusions of the General Division Member is clear. However, his disagreement alone is not sufficient to ground an appeal. The Tribunal has considered his submissions in the context of the applicable legislative provisions and finds that they fall short of the test in the DESD Act ss. 58(2). The Tribunal finds no error on the part of the General Division Member. The Applicant has not satisfied the Tribunal that the appeal would have a reasonable chance of success. Consequently, there is no basis on which the Tribunal can grant the Application.

[16] The Application is refused.

*Hazelyn Ross*

Member, Appeal Division