

Citation: *J. K. v. Minister of Employment and Social Development*, 2015 SSTAD 1092

Date: September 15, 2015

File number: AD-15-880

APPEAL DIVISION

Between:

J. K.

Applicant

and

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

Respondent

and

The Estate of W. K.

Added Party

Decision by: Valerie Hazlett Parker, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] The Applicant applied for a Division of Unadjusted Pensionable Earnings under the *Canada Pension Plan* in 2012. She had divorced her husband in 1975, and he passed away in 1990. His estate is the Added Party in this proceeding.

[2] The Respondent denied the Applicant's application initially and after reconsideration. She appealed to the Office of the Commissioner of Review Tribunals. The Appeal was transferred to the General Division of the Social Security Tribunal of Canada pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing and on June 23, 2015 dismissed the appeal.

[3] The Applicant asked for leave to appeal to the Appeal Division of the Tribunal. She set out as grounds of appeal that she suffered from age related health issues, loneliness and depression, lacked financial and family support, that the General Division failed to observe the principles of natural justice and that it based its decision on erroneous findings of fact that it made in a perverse or capricious manner or without regard to the material before it.

[4] The Respondent argued that the General Division correctly dismissed the appeal as a division of unadjusted pensionable earnings was only available to those divorced after January 1, 1978. The Applicant was divorced in 1975, so this benefit was not available to her.

ANALYSIS

[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 whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[6] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Section 58 of the Act sets out the only grounds of appeal that can be considered to

grant leave to appeal a decision of the General Division (this is set out in the Appendix to this decision). I must therefore decide if the Applicant has put forward a ground of appeal under section 58 of the Act that may have a reasonable chance of success on appeal.

[7] The Applicant argued that leave to appeal should be granted because she suffers from failing health, loneliness and depression, and has a lack of family or financial support. While I am sympathetic to her situation, these arguments do not point to any error made by the General Division or to a breach of the principles of natural justice. No ground of appeal under the Act is therefore disclosed.

[8] The Applicant also set out the tragic circumstances regarding her marriage and separation. Unfortunately, the Social Security Tribunal of Canada cannot grant her any relief on this basis. The Tribunal was created by statute and as such only has the authority granted to it by that statute. It cannot grant any relief to a claimant on compassionate grounds or because of extenuating circumstances. This ground of appeal does not have a reasonable chance of success on appeal.

[9] In addition, the Applicant argued that the General Division based its decision on erroneous findings of fact. She did not set out what erroneous findings of fact were made in this case. The General Division decision summarized the evidence that was presented at the hearing and in writing. Without some indication of a factual error being made by the General Division I am unable to conclude that the General Division based its decision on any erroneous findings of fact made in a perverse or capricious manner or without regard to the material before it. This ground of appeal does not have a reasonable chance of success on appeal.

[10] The Applicant, additionally, argued that the General Division did not observe the principles of natural justice. These principles are concerned with ensuring that parties to a claim have an opportunity to present their case, know the case against them and have the decision made by an impartial arbiter based on the facts and the law. The Applicant did not explain how any of these principles were not observed in this case. Without some details regarding how these principles were not observed, I cannot conclude that the General Division erred in this way. This ground of appeal does not have a reasonable chance of success on appeal.

[11] Finally, I accept the argument of the Respondent in this matter. The General Division correctly stated that the division of unadjusted pensionable earnings is only available to those divorced after January 1, 1978. As the Applicant was divorced three years prior to this, in 1975, this benefit is not available to her. The General Division made no error in this regard.

CONCLUSION

[12] The Application is refused because the Applicant did not present a ground of appeal that had 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.

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