



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. B. v. Minister of Employment and Social Development*, 2016 SSTADIS 487

Tribunal File Number: AD-16-1151

BETWEEN:

R. B.

Applicant

and

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

Respondent

and

V. H.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Hazelyn Ross

Date of Decision: December 12, 2016

REASONS AND DECISION

INTRODUCTION

[1] In a decision dated August 24, 2016 the General Division of the Social Security Tribunal, (the Tribunal) dismissed the Applicant's appeal of a reconsideration decision. The Applicant was disputing, among other things, the commencement date of the division of unadjusted pension earnings, (DUPE), made in favour of his former spouse, the Added Party. He seeks leave to appeal the decision of the General Division.

[2] This is the second time that this matter has come to the Appeal Division. It first came as an appeal from a decision of the General Division in which it dismissed, summarily, the applicant's appeal. A different Member of the Appeal Division allowed that first appeal. She found that there were justiciable issues and that the General Division had inappropriately invoked the summary dismissal provision in the *Department of Employment and Social Development Act* (DESD Act). The Member returned the matter back to the General Division with directions that it included the Added Party as a party to the proceedings.

[3] The General Division Member who determined the second appeal held that the Respondent had properly calculated the "division of unadjusted pensionable earnings (credit splitting)." The Member also held that the DUPE "was conducted in accordance with the Act and the adjustment of the Appellant's monthly benefit was in accordance with the Act." He indicated that the General Division did not have authority to reimburse the Appellant's reduction of his monthly benefit until the date that the Added Party became eligible to receive a monthly benefit. The General Division Member also declined to rule on the several issues, that the Applicant raised which had to do with the conduct of Ministerial or Tribunal staff.

REASONS FOR THE APPLICATION

[4] The Applicant submits that the General Division:

- a) Failed to exercise a principle of natural justice or otherwise acted beyond or failed to exercise its jurisdiction; and
- b) Erred in law in making its decision, whether or not the error appears on the face of the record.

ISSUE

[5] The Member must decide if the appeal has a reasonable chance of success.

THE LAW

[6] Subsections 56(1) and 58(3) of the Department of Employment and Social Development, (DESD), Act govern the grant of leave to appeal. Subsection 56(1) provides that “an appeal to the Appeal Division may only be brought if leave to appeal is granted.” Thus, leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division.

[7] Subsection 58(3) provides that “the Appeal Division must either grant or refuse leave to appeal.” In order to obtain leave to appeal, an applicant must satisfy the Appeal Division that their appeal would have a reasonable chance of success; otherwise the Appeal Division must refuse leave to appeal.¹ In *Canada (Attorney General) v. O’Keefe* 2016 FC 503, the Federal Court examined the jurisdiction of the Appeal Division to grant leave to appeal, stating that:

[36] Leave to appeal a decision of the SST-GD may be granted only where a claimant satisfies the SST-AD that their appeal has a “reasonable chance of success” on one of the three grounds of appeal identified in subsection 58(1) of the *DESDA*: (a) a breach of natural justice; (b) an error of law; or (c) an erroneous finding of fact made in a perverse and capricious manner or without regard for the material before it. No other grounds of appeal may be considered (*Belo-Alves*, above, at paras 71-73).

[8] An applicant satisfies the Appeal Division that his appeal would have a reasonable chance of success by raising an arguable case in his application for leave:² *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[9] Subsection 58(1) of the DESD Act sets out the only three grounds of appeal, namely:

- a. The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

¹ 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.”

² *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

- 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.

[10] *Tracey v. Canada (Attorney General)*, 2015 FC 1300 supports the view that in assessing an application for leave to appeal the Appeal Division must first determine whether any of the Applicant's reasons for appeal fall within any of the stated grounds of appeal.

[11] 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

[12] The Applicant submitted that the General Division ran afoul of paragraph 58(1)(a) of the DESD Act when it refused to grant equitable relief, namely, to rule that the DUPE should not take place until such time as the Added Party reached retirement age or to rule that he be refunded the moneys that had been deducted from his CPP retirement pension because of the DUPE.

[13] The Applicant also put forward several allegations of bias or wrongdoing that he made against the Tribunal generally, including a charge that the Tribunal had attempted to intimidate him in its letter of May 6, 2016. He also questioned why the General Division had returned materials to him and charged that Tribunal staff had failed to follow Canadian government directives.

[14] With respect to the errors of law the General Division committed, the Applicant submitted that it had misinterpreted the costs remedy he had been seeking; that it failed to analyse the "No Division" provision in the CPP; as well as failed to address his status as a beneficiary of the CPP.

ANALYSIS

Did the General Division breach paragraph 58(1)(a) of the DESD Act?

[15] The Applicant submitted that the General Division Member breached paragraph 58 (1)(a) of the DESD Act by declining to rule on the several issues the Applicant raised that had to do with the conduct of Ministerial or Tribunal staff, who he claimed acted to frustrate him. The Appeal Division finds that the General Division did not breach a principle of natural justice or acted beyond or refused to exercise its jurisdiction. Issues of conduct of Ministerial staff or tribunal employees do not present grounds of appeal under the DESD Act. For this reason, the Appeal Division is not satisfied that this is a ground of appeal that would have a reasonable chance of success.

CONCLUSION

[16] The Application is refused.

Hazelyn Ross
Member, Appeal Division