



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *W. T. v. Minister of Employment and Social Development*, 2017 SSTADIS 32

Tribunal File Number: AD-16-248

BETWEEN:

**W. T.**

Applicant

and

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

Respondent

and

**City of Toronto (Employment and Social Services)**

Added Party

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

---

Leave to Appeal Decision by: Janet Lew

Date of Decision: February 8, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated December 4, 2015, which determined that the Applicant was not entitled to a death benefit from the Respondent in connection with the death of the Applicant's sister (the "Contributor") in December 2013. The Added Party had received the death benefit. The Applicant filed an application requesting leave to appeal on February 4, 2016, invoking several grounds of appeal.

### ISSUE

[2] Does the appeal have a reasonable chance of success?

### ANALYSIS

[3] Subsection 58(1) of the *Department of Employment and Social Development (DESDA)* sets out the grounds of appeal as being limited to the following:

- (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.

[4] Before granting leave, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[5] The Applicant submits that:

- i. He had submitted all required documentation in support of the Canada Pension Plan death benefit, before the expiry of any deadlines, and he had met all other requirements. He is the Contributor's last remaining heir and family member – unlike the Added Party - and he had submitted all invoices and receipts regarding the burial of the Contributor, as requested by the Social Security Tribunal. He suggests that the Added Party may not have been entitled to receive the death benefit.
- ii. As he did not have the benefit of a lawyer and was unaware of the “full laws” of the Social Security Tribunal, the General Division member may have made errors. He decries the fact that the Added Party has full-time staff that is familiar with the process of seeking death benefits.
- iii. No one had ever requested that he provide a medical report to support his entitlement to a death benefit.

[6] The Applicant suggests that if the Added Party has a valid claim to the death benefit, the Social Security Tribunal should pay the death benefit to both the Applicant and the Added Party. He otherwise suggests that the Tribunal should petition the Respondent for statutory changes to allow payment of the full death benefit to each party who may have a valid claim thereto.

[7] The Applicant notes that there is no dispute over his relationship to the Contributor, or to the fact that he has incurred expenses for the Contributor's funeral. His letter of February 3, 2016 (AD1-1) indicates that he is still waiting for the Ontario Superior Court of Justice to declare him the legal executor of the Contributor's estate.

[8] Essentially, the Applicant is seeking a review or reassessment of the evidence in his favour when he argues that he submitted all required documentation and met all other requirements under the *Canada Pension Plan*, as this was the same argument that he had raised before the General Division. A review or reassessment of the evidence does not fall within any of the grounds of appeal under subsection 58(1) of the DESDA. As the Federal

Court held in *Tracey*, it is not the role of the Appeal Division to reassess the evidence or reweigh the factors considered by the General Division when determining whether leave should be granted or denied. Additionally, I am mindful of the words of the Federal Court in *Hussein v. Canada (Attorney General)*, 2016 FC 1417, that the “weighing and assessment of evidence lies at the heart of the [General Division’s] mandate and jurisdiction. Its decisions are entitled to significant deference.” I am not satisfied that the appeal has a reasonable chance of success on the ground that the General Division failed to consider the fact that he is the last remaining heir and family heir, or that he had incurred funeral expenses.

[9] I note in any event that, although the Applicant relies on section 71 of the *Canada Pension Plan* which stipulates that the Respondent shall pay the death benefit to the estate of the contributor, that the Applicant implicitly acknowledges that, at the time of his application, he had yet to be declared the executor of the estate. As such, he could not have enjoyed a statutory right to the death benefit, subject to the exceptions set out in subsection 71(2) and (3)

[10] It is of no relevance whether the Applicant is unrepresented and, on the other hand, that the Added Party has a “funeral services unit”, familiar with the application process for the Canada Pension Plan death benefit. As the Federal Court stated in *McCann v. Canada (Attorney General)*, 2016 FC 878, “the law is the same for all and does not vary depending on whether a litigant chooses to be represented or to represent himself or herself”.

[11] The Applicant suggests that he was required to provide a medical report to establish his entitlement to a death benefit. The *Canada Pension Plan* does not require an applicant to provide his or her medical records in support of an application for a death benefit. The General Division did not dismiss the appeal on the basis that the Applicant had failed to provide a medical report; indeed, the General Division did not require that he provide one to establish entitlement.

[12] The Applicant suggests that the death benefit be paid to him and to the Added Party, but there are no provisions under the *Canada Pension Plan* of which I am aware that holds the Respondent liable to the Applicant, given the circumstances.

### **CONCLUSION**

[13] I am not satisfied that the appeal has a reasonable chance of success on the grounds set out by the Applicant. The application for leave to appeal is dismissed.

Janet Lew  
Member, Appeal Division