Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *B. E. v. Minister of Employment and Social Development*, 2017 SSTADIS 72

Tribunal File Number: AD-16-680

BETWEEN:

B. E.

Applicant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Meredith Porter

Date of Decision: February 27, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] On February 10, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a death benefit under the *Canada Pension Plan* was not payable. The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on May 11, 2016.

ISSUE

[2] The member must decide if the appeal has a reasonable chance of success.

THE LAW

[3] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (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."

[4] 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."

[5] According to subsection 58(1) of the DESD Act, the only grounds of appeal are 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.

[6] Paragraph 49(*a*) and (*b*) of the *Canada Pension Plan* (CPP) sets out a contributor's contributory period. It starts the later of January 1, 1966, or when the contributor reaches 18

years of age. Where a benefit commences after the end of 1986, the contributory period generally ends with the earliest of:

i. the month before the month the contributor reaches 70 years of age;

ii. the month in which the contributor dies; or

iii. the month before the month in which a CPP retirement pension commences.

[7] Subsection 44(3) of the CPP sets out the requirements to meet the minimum qualifying period (MQP). My interpretation of the legislation is that if the contributory period is less than 9 years, at least 3 years of valid contributions are required. If the contributory period is between 9 and 30 years, valid CPP contributions are required for at least one third of those years. If the contributory period is more than 30 years, at least 10 years of valid contributions are required.

SUBMISSIONS

[8] The Applicant submitted that the General Division erred in calculating the contributor's MQP, as the Record of Earnings (ROE) includes only 5 valid years of contributions and the contributor has additional valid years of contributions that are not included in the ROE.

[9] The General Division erred in its calculation of the contributor's contributory period in paragraph 9. The General Division calculated the contributory period to be from 1966 until 1985, at which time the contributor turned 65 years old. In fact, the Applicant states that in 1985 the contributor was 70 years old, having been born in 1916.

[10] The Applicant was not given an opportunity to provide evidence at a hearing.

ANALYSIS

[11] The Applicant asserts that the ROE does not accurately reflect the number of years of valid contributions made by the contributor within the contributory period. The Applicant did not produce any evidence to the General Division that the valid years of contribution as reflected on the ROE were incorrect. The Appeal Division cannot accept new evidence that was not considered by the General Division. Section 58 of the DESD Act sets out the grounds upon

which the Appeal Division may grant leave to appeal a decision of the General Division. The submission of new evidence is not a ground upon which the Appeal Division may grant leave. It would be an improper exercise of the delegated authority granted to the Appeal Division to grant leave on grounds not included in section 58 of the DESD Act (see *Canada (Attorney General) v. O'keefe*, 2016 FC 503). As a result, leave cannot be granted on this ground.

[12] The Applicant further alleges that the General Division erred in calculating the contributory period in paragraph 9 of the General Division decision. I note that, in paragraph 9, the contributory period is calculated to run from "1966 until 1985 at which time the contributor turned 65 years old". The contributor's date of birth is September 1916. In 1985, the contributor would have actually been 70 years old. It appears as though the General Division member incorrectly stated the age of the contributor, although the contributory period seems to have been correctly calculated pursuant to subparagraph 49(*b*)(i) of the CPP. The contributory period ranges from 1966 until 1985. There are 20 years in the contributory period, which means that the contributor had to contribute for 7 valid years.

[13] To complicate the issue further, however, it is noted in paragraph 14 of the General Division decision that the contributory period "extended from 1966 until 1981….", while the General Division had previously determined that the contributory period ran from 1966 until 1985 in paragraph 9 of the decision. Under the CPP, there cannot be two different contributory periods for determining entitlement to a death benefit. The General Division erred in setting out two time periods.

[14] Although the calculation of the contributory period is central to determining entitlement to a death benefit, whether the contributory period was determined to be from 1966 to 1981 (16 years) or the correct period ranging from 1966 until 1985 (20 years), the contributor in this case did not have enough valid years of contributions for either contributory period. Even if the contributory period was only 16 years, there would have to have been 6 valid years of contributions and there were not. The Appeal Division notes the error in the General Division decision, but the outcome of an appeal on this ground would be the same. No death benefit would be payable. The Applicant does not have an arguable case on this ground. As a result, leave to appeal cannot be granted on this ground.

[15] The Applicant also argued that he became aware that the General Division was ready to proceed with the appeal in a letter dated December 3, 2015. Upon receipt of that letter, he states that he had expected a hearing date to be set and that he would attend a hearing in order to provide additional evidence.

[16] In a second letter dated January 2, 2016, the Applicant was notified that the General Division member assigned to the appeal intended to proceed with a decision based only on the documents that had been filed and that no hearing would be scheduled. The letter also provided reasons for the General Division member's chosen method of proceeding, which included:

- A hearing was not required;
- The issues were not complex;
- There were no gaps in the information;
- Credibility was not an issue; and
- This method respected the requirement to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[17] The Applicant was provided an opportunity, as set out in the January 2016 letter, to respond to the General Division decision to proceed with a decision on the documents filed and provide any reasons why a hearing might be necessary. No request to reconsider the method of proceeding was provided by the Applicant. There was no additional documentation or information provided by the Applicant either.

[18] There does not appear to be any indication that the Applicant was not provided notice regarding the chosen method of proceeding or an opportunity to explain why a hearing was needed. There is no evidence that the Applicant was not provided the opportunity to submit any and all information or documentation that he thought would be relevant to his appeal.

[19] As a result, I am not granting leave on the basis that the General Division member failed to observe principles of natural justice.

CONCLUSION

[20] The Application is refused.

Meredith Porter
Member, Appeal Division