



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. B. v. Minister of Employment and Social Development*, 2017 SSTADIS 123

Tribunal File Number: AD-16-1113

BETWEEN:

E. B.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: March 29, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division of the Social Security Tribunal dated August 2, 2016. Having conducted a hearing based on the documentary record, the General Division determined that the Applicant was ineligible for a division of unadjusted pensionable earnings (DUPE or credit split) under the *Canada Pension Plan* (CPP), because he had provided insufficient information about his former spouse in his application.

[2] On September 8, 2016, the Applicant submitted to the Appeal Division an incomplete application requesting leave to appeal detailing alleged grounds for appeal. Following a request for further information, the Applicant perfected his request for leave on October 13, 2016, within the specified time limitation.

[3] For this application to succeed, I must be satisfied that the appeal has a reasonable chance of success.

THE LAW

Canada Pension Plan

[4] Paragraph 55.1(1)(a) of the CPP states that a DUPE shall take place, in the case of spouses, following a judgment granting a divorce, on the Respondent being informed of the judgment and receiving the prescribed information.

[5] Subsection 54(2) of the *Canada Pension Plan Regulations* (CPP Regulations) states that an applicant for a DUPE pursuant to paragraph 55.1(1)(a) of the CPP shall provide the Respondent information relating to the marriage, including the name at birth, present name, address, social insurance number (SIN) of the applicant's former spouse, the addresses of all residences where the former spouses lived together, the date the former spouses commenced living separate and apart, the dates of all periods when the former spouses lived together in a conjugal relationship, and a copy of any written agreement between the former spouses that contains a provision concerning a division of pension credits that is binding on the Respondent.

Department of Employment and Social Development Act

[6] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESDA), an appeal to the Appeal Division may be brought only if leave to appeal is granted and the Appeal Division must either grant or refuse leave to appeal.

[7] Subsection 58(2) of the DESDA provides that leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

[8] According to subsection 58(1) of the DESDA, 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 made in a perverse or capricious manner or without regard for the material before it.

[9] Some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada*.¹ The Federal Court of Appeal has determined that an arguable case at law is akin to determining whether legally an appeal has a reasonable chance of success: *Fancy v. Canada*.²

[10] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is an initial hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove the case.

¹ *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

² *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

ISSUE

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

SUBMISSIONS

[12] In his application requesting leave to appeal, the Applicant made the following submissions:

- (a) He does not believe he received justice from the General Division when it considered his application for a credit split. It failed to mention the fact that the Respondent had apparently conducted an investigation that identified his former's wife's SIN, which is seen at GD2-2 of the hearing file. For months, the Respondent has used its supposed inability to trace the Applicant's former wife as an excuse to deny him his DUPE.
- (b) In paragraph 7 of its decision, the General Division stated that, on his DUPE application, he failed to provide dates when he and his former spouse had lived together before their marriage. In fact, he did specify a period in which they had cohabited before their wedding: "Approx. 1974 to September 15, 1976" (GD2-12).

ANALYSIS

[13] The Respondent received the Applicant's DUPE application on September 15, 2014. In it, he disclosed that he and his former wife were married on September 16, 1976, and were divorced on June 2, 1988. He reported that he did not know his former wife's SIN, date of birth, province of birth, mailing address or home address. He also stated that he was unsure whether he and his former wife had entered into a written agreement or whether a court order had been issued concerning the division of pension credits. The Respondent denied the application initially and on reconsideration.

[14] The General Division denied the Applicant's appeal because his DUPE application did not contain the information prescribed in paragraph 55.1(1)(a) of the CPP and subsection 54(2) of the CPP Regulations. The General Division noted that the onus was on the Applicant to

establish his entitlement to a DUPE and that it found no obligation, on the part of the Respondent, to seek out the required information from other government departments.

[15] Having carefully examined the decision, I can find no indication that the General Division breached any principle of natural justice or committed an error in fact or law. The General Division considered the evidence in the context of the applicable law and concluded, correctly in my view, that the Applicant had failed to provide the prescribed information specified in paragraph 55.1(1)(a) of the CPP and subsection 54(2) of the CPP Regulations.

[16] The Applicant provided very little information beyond his former wife's name when he applied for the DUPE. I see nothing in the applicable provisions that requires every box in the application to be completed, but an applicant must provide sufficient information to permit the Respondent to definitively identify the contributor who is proposed as the subject of the credit split. It is true that, while adjudicating the application, the Respondent identified a SIN associated with the name of the Applicant's former spouse, but it is clear this was simply a tentative finding, and the correspondence indicates that the Respondent required at least one needed more piece of information (such as a date of birth or a former address) to confirm that the individual it had identified was in fact the same person to whom the Applicant had been married nearly 30 years ago. In the end, the General Division found the Respondent's requests for further information to be reasonable and in compliance with the law, and I see no reason to interfere with this assessment.

[17] The Applicant also alleged that the General Division committed a factual error when it found that he failed to specify the dates when he and his former spouse had lived together before their marriage. Having reviewed the September 15, 2014 application, I must agree that the General Division erred on this point, but I do not think that the error was "made in a perverse or capricious manner or without regard for the material before it" and, more importantly, I doubt the General Division based its decision on it. The Applicant's disclosure of his premarital cohabitation, and the General Division's failure to acknowledge it, had no bearing on the central issue in this proceeding—whether he submitted sufficient information to permit a positive identification of his former wife for the purpose of enabling a credit split.

[18] While the General Division's analysis did not arrive at the conclusion that the Applicant would have preferred, it is not my role to reassess the evidence, but rather to determine whether the decision is defensible on the facts and the law. My authority permits me to determine only whether any of the Applicant's reasons for appealing falls within the specified grounds and whether any of them has a reasonable chance of success.

[19] I see no arguable case for any of the grounds of appeal raised by the Applicant.

CONCLUSION

[20] For the reasons set out above, the application for leave to appeal is refused.



Member, Appeal Division