



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. C. B.*, 2017 SSTADIS 635

Tribunal File Number: AD-16-1211

BETWEEN:

Minister of Employment and Social Development

Applicant

and

C. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: November 14, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Respondent (Claimant) began to receive a Canada Pension Plan survivor's pension in 1983. She turned 65 in 2012 and, in December 2012, she began to receive a Canada Pension Plan retirement pension. At this time, her survivor pension was recalculated and combined with the retirement pension pursuant to section 58 of the *Canada Pension Plan*. The Claimant appealed the decision to combine her pensions to the General Division of the Social Security Tribunal of Canada (Tribunal), and she claimed that section 58 of the *Canada Pension Plan* violates her rights under sections 7, 10, 11, 12 and 15 of the *Canadian Charter of Rights and Freedoms* (Charter).

[2] The Applicant (Minister) requested, pursuant to section 4 of the *Social Security Tribunal Regulations* (Regulations), that the General Division summarily dismiss the Charter claim, as it was not substantiated by facts, case law or other information and because the Charter record that the Claimant had filed did not meet the requirements set out in section 20 of the Regulations. On August 22, 2016, the Tribunal's General Division dismissed the request to summarily dismiss the Charter claim.

[3] The Minister seeks to appeal this decision.

ANALYSIS

[4] I must decide whether the Applicant can appeal as of right the decision to refuse to summarily dismiss the Charter claim or whether leave to appeal is required. If I decide that leave to appeal is required, I must then decide whether to grant leave to appeal.

Appeal as of Right

[5] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. Section 56 of the DESD Act provides that an appeal may be brought to the Tribunal's Appeal Division only if leave to appeal is granted, but that no leave to appeal is necessary if the General Division summarily dismisses an appeal under subsection 53(3). Section 53 provides that the Tribunal's General Division must summarily dismiss an appeal if it

is satisfied that it has no reasonable chance of success. Subsection 53(3) provides that the appellant may appeal the decision to the Appeal Division. The term “appellant” is not defined. Reading sections 53 and 56 of the DESD Act together, the term appellant must refer to the appellant at the General Division. The Minister was not the appellant at the General Division in this matter, so it could not appeal the decision as of right, pursuant to subsection 53(3) of the DESD Act.

[6] Section 4 of the Regulations provides that any party may request the Tribunal to provide for any matter concerning a proceeding. This could include dismissing part of an appeal.

[7] In this case, the Minister requested that the General Division summarily dismiss the Charter portion of the appeal. This request was properly made pursuant to section 4 of the Regulations. Therefore, the decision not to dismiss the Charter claim was made pursuant to section 4 of the Regulations, not section 53 of the DESD Act. Accordingly, the Minister must obtain leave to appeal before Appeal Division can consider the matter.

Leave to Appeal

[8] Regarding leave to appeal, according to subsections 56(1) and 58(3) of the DESD Act, 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.

[9] The only grounds of appeal available under subsection 58(1) of the DESD Act 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.

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

[11] I must therefore determine whether the Applicant has presented a ground of appeal under the DESD Act that has a reasonable chance of success on appeal.

[12] In summary, the Minister argues that the General Division failed to observe the principles of natural justice, that it failed to exercise its jurisdiction by refusing to dismiss the Charter portion of the appeal and that it erred in law by reversing the onus of proof, as it required the Minister to file its Charter record when the Claimant had not filed one that was sufficient under the Regulations. This required the Minister to prove that no Charter breach had occurred when the Claimant should bear the onus of proving that there was a Charter breach.

[13] I am satisfied that the General Division may have failed to observe the principles of natural justice when it refused to dismiss the Claimant's Charter claim. The Minister contended that the Claimant's Charter record did not clearly set out the basis for her argument that sections 7, 10, 11, 12, and 15 of the Charter had been breached. Consequently, the Minister did not know the case that it had to meet in this litigation. One of the principles of natural justice is that all parties are to know the case they have to meet and that they have the opportunity to do so. If the Claimant's Charter record did not set out the basis for her claimed breach of various sections of the Charter, the Minister could not know and adequately respond to the Respondent's case. This ground of appeal may have a reasonable chance of success on appeal.

[14] In *Mette v. Canada (Attorney General)*, 2016 FCA 276, the Federal Court of Appeal stated that it is not necessary for the Appeal Division to address all the grounds of appeal that an applicant raises. As I am satisfied that the Applicant has presented a ground of appeal that may have a reasonable chance of success, I need not consider the other grounds of appeal presented. The parties are not, however, restricted to the ground of appeal considered in this decision at the hearing of the appeal.

CONCLUSION

[15] The Application is granted. The parties are invited to address what form the hearing of the appeal might take as well as the legal issues in their written submissions.

[16] This decision to grant leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division