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

Citation: *G. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 633

Tribunal File Number: AD-17-511

BETWEEN:

G. S.

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: November 10, 2017

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] This appeal is concerned with the meaning of "survivorship" under the *Canada Pension Plan* (CPP). The Applicant, G. S., was married to a CPP contributor, the late D. S. They were divorced in 2001, and she passed away in 2005. Mr. G. S. applied for a CPP survivor's benefit in 2014. The Respondent, the Minister of Employment and Social Development, refused the application after it determined that Mr. G. S. was not a survivor within the meaning of the legislation. He then appealed this determination to the General Division of the Social Security Tribunal (Tribunal).

[3] The General Division conducted a hearing on the matter but dismissed the Applicant's appeal, finding no evidence that he and his late wife had a conjugal relationship or lived together as common-law partners at any time after their divorce.

[4] On July 12, 2017, Mr. G. S. submitted an application for leave to appeal to the Tribunal's Appeal Division, alleging that the General Division erred in rendering its decision. In particular, he claimed that the presiding General Division member displayed bias, telling him at the outset of the hearing that the law was against him. He also suggested that the member failed to take into account his submission that the deceased contributor divorced him because she was mentally ill.

[5] On October 25, 2017, the Tribunal reminded Mr. G. S. of the specific grounds of appeal permitted under the *Department of Employment and Social Development Act* (DESDA) and asked him to provide, within a reasonable time frame, more detailed reasons for the request for leave to appeal. In a letter dated November 2, 2017, Mr. G. S. replied that he had already submitted all the information needed to decide his appeal. He alleged that government officials did nothing to help his former wife in her final years, despite her illnesses and financial difficulties. He said that she did not know what she was doing when she divorced him, and he

continued to consider them husband and wife until her death. He maintained that Ms. D. S. did not work until the last few years of her life and that most of the contributions to her CPP were made by him. In the final period of her life, Ms. D. S. moved in with their daughter and he paid all her expenses.

[6] I have examined the General Division's decision against the record and concluded that the grounds of appeal put forward by Mr. G. S. would have no reasonable chance of success on appeal.

ISSUES

[7] There are two issues before me: Does Mr. G. S. have an arguable case that the General Division

(a) breached a principal of natural justice by prejudging his appeal?

(b) disregarded his submissions, including evidence that he paid for the deceased contributor's living expenses prior to her death and considered himself her husband, despite their divorce?

ANALYSIS

[8] According to section 58 of the DESDA, there are only three grounds of appeal to the Appeal Division: The General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material. An appeal may be brought only if the Appeal Division first grants leave to appeal,[1] but the Appeal Division must first be satisfied that it has a reasonable chance of success.[2] The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.[3]

[1] DESDA at subsections 56(1) and 58(3).
[2] *Ibid*. at subsection 58(1).
[3] *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

Issue 1: Is there an arguable case that the General Division prejudged the appeal?

[9] The threshold for a finding of bias is high, and the onus of establishing bias lies with the party alleging its existence. The Supreme Court of Canada[4] has stated that the test for bias is: "What would an informed person, viewing the matter realistically and practically and having thought the matter through conclude?" A real likelihood of bias must be demonstrated, with a mere suspicion not being enough. Not every favourable or unfavourable disposition attracts the label of impartiality. Bias denotes a state of mind that is in some way predisposed to a particular result that is closed with regard to particular issues.

[10] In my view, there is no arguable case that the General Division's introductory comments crossed the threshold to bias. In advising Mr. G. S. that the law, as she understood it, did not favour the facts, as he had presented them, the presiding General Division member was doing no more than informing him that he had not, to that point, presented a strong case on paper. The member presumably called for an oral hearing to give him an opportunity to remediate his case through testimony, and she, quite reasonably in my view, informed him of that fact early in the proceedings. Nothing in my review of the decision or the audio recording of the hearing suggests to me that the member approached the Applicant's submissions with anything less than an open mind.

Issue 2: Is there an arguable case that the General Division ignored the Applicant's submissions?

[11] Mr. G. S. suggests that the General Division failed to consider relevant evidence but, again, I see no arguable case on this point. His submissions to the Appeal Division are, in substance, the same as those that he made to the General Division. My review of its decision indicates that the General Division gave due consideration to the Applicant's evidence that his former wife divorced him because she was mentally ill, yet he cared for her in the final years of her life. Having done so, it came to the defensible conclusion that Mr. G. S. was not in a common-law relationship with the deceased contributor at the time of her death, as required under subsection 42(1) of the CPP. I see no indication that the General Division erred in law or ignored, or gave inadequate consideration to, any significant aspect of the evidentiary record.

[4] *Committee for Justice and Liberty v. Canada (National Energy Board)* 1976 2 (SCC), 1978 1 SCR.

[12] While the General Division did not arrive at the conclusion that Mr. G. S. 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 according to the law. An appeal to the Appeal Division is not an opportunity for an applicant to re-argue their case and ask for a different outcome. My authority permits me to determine only whether there is an arguable case that any of the Applicant's reasons for appealing falls within the specified grounds of subsection 58(1) of the DESDA.

CONCLUSION

[13] As the Applicant has not identified any grounds of appeal that would have a reasonable chance of success, the application for leave to appeal is refused.

Member, Appeal Division