



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. B. v. Minister of Employment and Social Development*, 2017 SSTADIS 660

Tribunal File Number: AD-17-166

BETWEEN:

A. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision by: Shu-Tai Cheng

Date of Decision: November 17, 2017

REASONS AND DECISION

DECISION

[1] The appeal of the decision rendered by the General Division of the Social Security Tribunal of Canada (Tribunal) on January 30, 2017, is dismissed.

OVERVIEW

[2] The Appellant, M. B., for the estate of R. B., applied for a Canada Pension Plan (CPP) death benefit. She submitted that following the death of R. B. (the contributor), the estate was eligible for a benefit.

[3] The Respondent, the Minister of Employment and Social Development, denied this application because the contributor must have made valid contributions to the CPP for at least 10 years, but he made contributions for only one year.

[4] The Appellant appealed the Respondent's decision to the Tribunal on the basis of the contributor's years of work in the United States (US). The General Division summarily dismissed the appeal because the contributor had made contributions for only one year, and there was no evidence of contributions made in Canada or the US for more than one year.

[5] The Appellant argues that the General Division "lost" the American documents and that it erred in law in its decision.

[6] The appeal must be dismissed because there is no evidence that any American documents were filed and no evidence that the contributor made contributions for at least 10 years.

ISSUE

[7] Did the General Division lose relevant evidence on the contributor's CPP contributions?

ANALYSIS

[8] The General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.¹ Following a summary dismissal by the General Division, no leave is needed to appeal to the Appeal Division.²

[9] The only grounds of appeal are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.³

Did the General Division lose relevant evidence on the contributor's CPP contributions?

[10] According to the Appellant, the General Division made serious errors in finding that the contributor did not have the necessary contributions for a death benefit to have to be paid to his estate. She refers to a “cover-up” and the loss of “American papers” showing that the contributor had worked in the US.

[11] However, upon reading the General Division's decision and the appeal docket, I note that the General Division considered the evidence in the file and that it did not disregard the evidence or the loss of documents. There is simply no evidence in the file regarding the contributor working in the US or his contributions stemming from this work. The Appellant states that the contributor worked in the US and that he paid what he was required to pay, but there is no documentary evidence in this regard.

[12] The Appellant wrote that the contributor had never tried to contact American authorities to obtain proof of his contributions in the US.⁴ The appeal docket contains no evidence regarding the contributor's CPP contributions, except for a single year (1972). There cannot be a loss of evidence when no evidence was submitted.

¹ *Department of Employment and Social Development Act* (DESDA) at subsection 53(1).

² DESDA at subsection 56(2).

³ DESDA at section 58.

⁴ GD2-12: letter from the Appellant dated June 11, 2016.

The General Division's Decision

[13] The General Division notified the Appellant of its intention to dismiss the appeal summarily. The Appellant's response did not add anything to the evidence on file.

[14] The issues before the General Division were the following: a) What was the contributor's contributory period, and how many years of valid contributions to the CPP did he have? b) Did the contributions meet the CPP criteria for a death benefit to have to be paid to his estate?

[15] The contributor's contributory period was 28 years.⁵ The Appellant did not contest this. She contests the finding regarding the years of valid contributions. Based on the evidence in the file, the General Division found that contributions had been made during a single year (1972).

[16] To meet the CPP criteria, the contributor was required to make valid contributions to the CPP for at least 1/3 of the years in the contributory period.⁶ The General Division found that the contributor did not meet the criteria, since there was evidence of only one year of contributions.

[17] I find that the General Division was correct. There was no evidence of any more contributions made in Canada and no evidence of any contributions made in the US. The contributor could not meet the legislative criteria with only one year of valid contributions.

[18] Based on this situation, the General Division decided on the record to dismiss the appeal summarily.

Summary Dismissal: Legal Test

[19] I note that the determination of whether to summarily dismiss is a threshold test. It is not appropriate to examine the case on the merits in the absence of the parties, and then find that

⁵ CPP at section 49.

⁶ *Ibid.* at subsection 44(3).

the appeal cannot succeed.⁷ The question to be asked for summary dismissal is as follows: Is it plain and obvious on the record that the appeal is clearly bound to fail?

[20] More specifically, the question is not whether the appeal must be dismissed after considering the facts, the case law, and the parties' arguments. Rather, it must be determined whether the appeal is bound to fail, regardless of the evidence or arguments that could be presented at a hearing.

[21] I find that this appeal is bound to fail, regardless of the evidence or arguments that could be presented at a hearing. There was, quite simply, no convincing evidence or argument that could be presented. The Appellant had no other evidence, and the contributor had never requested documentation regarding his work in the US.

[22] Although the Appellant is not satisfied with the General Division's decision and its finding that she is not entitled to a death benefit, the General Division did not disregard the relevant evidence and did not lose evidence.

[23] In addition, for the above-mentioned reasons, I find that the General Division did not err in law in making its decision.

CONCLUSION

[24] The appeal is dismissed.

Shu-Tai Cheng
Member, Appeal Division

⁷ *Lessard-Gauvin v. Canada (Attorney General)*, 2013 FCA 147; *Breslaw v. Canada (Attorney General)*, 2004 FCA 264.