



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. D. v. Minister of Employment and Social Development*, 2018 SST 22

Tribunal File Number: AD-17-925

BETWEEN:

C. D.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: January 8, 2018

REASONS AND DECISION

DECISION

[1] The application for leave to appeal is refused.

INTRODUCTION

[2] The Applicant resided with the deceased contributor from 1996 until at least April 2012. The deceased passed away in February 2015. The Applicant applied for a Canada Pension Plan survivor's pension on the basis that she was the deceased's common-law partner. The Respondent refused the application and she appealed this decision to this Tribunal. On August 30, 2017, the Tribunal's General Division decided that the Applicant was not the deceased's common-law partner at the time of his death and dismissed the appeal. The Applicant filed the application for leave to appeal with the Tribunal's Appeal Division on December 5, 2017.

ANALYSIS

[3] The *Department of Employment and Social Development Act* (DESD Act) governs the operation of this Tribunal. 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.

[4] The only grounds of appeal available under the DESD Act are set out in subsection 58(1), namely, that the General Division failed to observe a principle of natural justice, made an error of law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it. Subsection 58(2) states that leave to appeal is to be refused if the appeal has no reasonable chance of success.

[5] I must therefore decide whether the Applicant has presented a ground of appeal that falls under subsection 58(1) of the DESD Act and that may have a reasonable chance of success on appeal.

[6] First, the Applicant argues that the General Division erred because it did not consider her testimony, submissions, and other evidence presented at the hearing. She does not specify,

however, what evidence was overlooked or misconstrued. The General Division decision contains a summary of the oral and written evidence that was submitted by the Applicant and the Respondent. The General Division member also permitted the Applicant to file further evidence after the oral hearing, and this evidence was considered. Paragraph 23 of the decision sets out the Applicant's position that she and the deceased lived together from 1996 until 2012, when they separated for a period of time; that he returned to live with her from August 2013 until June 2014, when they separated their assets; and that he again returned to her home until January 2015, when he went to stay with a friend and passed away suddenly. It considered this evidence and the documents presented by the Applicant, along with the evidence that was contrary to this position, including a telephone conversation between the Respondent and the deceased's daughter where she stated that the deceased and the Applicant separated in 2012, why he obtained a hunting licence and a driver's licence in Newfoundland, etc. The General Division weighed this evidence and applied the law to the facts to reach its decision. The General Division is also presumed to have considered all of the evidence before it (*Simpson v. Canada (Attorney General)*, 2012 FCA 82), and the Applicant has not submitted anything to the Appeal Division to rebut this presumption. Therefore, this ground of appeal does not have a reasonable chance of success on appeal.

[7] The Applicant also confirms that the General Division decision correctly sets out the law and in paragraph 22 identifies the factors that may be relevant when deciding if a claimant was in a conjugal relationship with another person. However, the Applicant disagrees with the conclusion reached by the General Division when it considered these factors in light of all of the evidence before it. Disagreement with a decision is not a ground of appeal under subsection 58(1) of the DESD Act as it does not point to any error made by the General Division.

[8] In addition, the Applicant repeats her evidence that is summarized in paragraph 24 of the decision and takes issue with the General Division's finding that it was not credible that the Applicant would have been in a close and lovely [*sic*] relationship with the deceased and yet not know where he was staying for several months of the year. The repetition of evidence is not a ground of appeal under the DESD Act. And again, disagreement with a conclusion reached by the General Division is not a ground of appeal.

[9] Finally, the Applicant filed a copy of a firearm licence and renewal application form. However, the presentation of new evidence is not a ground of appeal under subsection 58(1) of the DESD Act.

[10] I have reviewed all of the documents filed in support of this application for leave to appeal, as well as the written record. I am satisfied that the General Division did not overlook or misconstrue any important evidence. There is no indication that it made no error of law or that it failed to observe a principle of natural justice.

CONCLUSION

[11] For these reasons I am not convinced that the Applicant has presented a ground of appeal under subsection 58(1) of the DESD Act that may have a reasonable chance of success on appeal.

Valerie Hazlett Parker
Member, Appeal Division