



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. P. v. Minister of Employment and Social Development*, 2018 SST 116

Tribunal File Number: AD-17-574

BETWEEN:

**S. P.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

and

**The Estate of R. E.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: February 1, 2018

## DECISION AND REASONS

### DECISION

[1] Leave to appeal is refused.

### OVERVIEW

[2] S. P., the Applicant, was married to the deceased contributor in 1963. They later separated, and Ms. R. E. entered a common-law relationship with the deceased. After the deceased's death, both the Applicant and Ms. R. E.'s estate (Added Party) applied for a Canada Pension Plan survivor's pension. The Minister of Employment and Social Development (Minister) granted the pension to the Added Party. The Applicant appealed this decision to the Social Security Tribunal. The Tribunal's General Division dismissed the appeal. The application for leave to appeal is refused because the Applicant did not present a ground of appeal that may have a reasonable chance of success on appeal.

### ISSUES

[3] I must decide whether there may be a reasonable chance of success on appeal because the General Division based its decision on an erroneous finding of fact that the Added Party was the deceased's common-law partner, or because the General Division failed to observe a principle of natural justice.

### ANALYSIS

[4] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three narrow grounds of appeal that can be considered, 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.<sup>1</sup> In addition, leave to appeal is refused if

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<sup>1</sup> Subsection 58(1) of the DESD Act

the appeal has no reasonable chance of success.<sup>2</sup> The Applicant's grounds of appeal must be examined in this context.

### **The General Division Made No Erroneous Findings of Fact**

[5] The Applicant argues that the General Division based its decision on an erroneous finding of fact that the Added Party was the deceased's common-law partner. She acknowledges that the deceased and the Added Party lived together for many years. However, they resided separately for approximately two months prior to his death. This evidence was presented to and considered by the General Division. The General Division concluded that although the deceased and the Added Party did not remain in the same home just prior to the deceased's death, their separation was involuntary due to their health situations.<sup>3</sup> In its decision, the General Division explains the evidentiary and legal basis for this conclusion.

[6] In addition, the General Division considered the Applicant's argument that because the Added Party also died, she was no longer the deceased's common-law partner, and therefore not eligible for the survivor's pension. It dismissed this claim, and set out the legal basis for so doing.<sup>4</sup>

[7] The facts and law upon which these findings were based are not in dispute. There is no indication that the General Division made any error in setting out the facts. I am satisfied that it did not overlook or misconstrue any important facts. This ground of appeal has no reasonable chance of success on appeal, so leave to appeal cannot be granted on this basis.

### **The Principles of Natural Justice Were Observed**

[8] The principles of natural justice are concerned with ensuring that the parties to an appeal know and understand the legal case they have to meet, have an opportunity to present their case, and have a decision made by an independent decision-maker based on the law and the facts. The Applicant states that she did not understand a two-hour teleconference that was held on this matter, and why she was included in it because the discussion focussed on the

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<sup>2</sup> Subsection 58(2) of the DESD Act.

<sup>3</sup> Paragraph 40 of the General Division decision.

<sup>4</sup> Paragraph 42 of the General Division decision.

Added Party and what documents she had to produce. The General Division decision explains that a pre-hearing teleconference was held to discuss issues regarding the Minister's redaction of relevant documents in the record. The decision also states that any documents that were produced by any party were shared with the other parties who were also given an opportunity to respond to them.

[9] While having a pre-hearing teleconference was complex and time-consuming, I am not satisfied that the General Division failed to observe any principle of natural justice by proceeding in this way. In fact, it appears that the General Division took active steps to ensure that all parties had all of the information that was relevant to the matter in spite of the Minister's attempt to obstruct this. The General Division also ensured that all parties had an adequate opportunity to know the information presented by the other parties and to respond to it. No ground of appeal is revealed by this.

[10] Finally, the Applicant wrote about her financial distress and included medical documents that established her poor health. I have great sympathy for the Applicant and her circumstances. The Tribunal has no authority, however, to grant relief based on dire financial circumstances or sympathy. It has only the authority given to it in the DESD Act. Leave to appeal cannot be granted on the basis of this information.

## **CONCLUSION**

[11] Leave to appeal must be refused for these reasons.

Valerie Hazlett Parker  
Member, Appeal Division