



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. Y. v. Minister of Employment and Social Development*, 2018 SST 221

Tribunal File Number: AD-18-108

BETWEEN:

R. Y.

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: March 7, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] R. Y. (Claimant) applied for a division of unadjusted pensionable earnings after separating from her common-law partner. The Minister of Employment and Social Development refused the application because it was made more than four years after the Claimant's separation. The Claimant appealed this decision to the Social Security Tribunal of Canada and claimed that she did not separate from her common-law partner until 2012, so the application was not late. The Tribunal's General Division dismissed the appeal. Leave to appeal to the Tribunal's Appeal Division is refused because the appeal has no reasonable chance of success on the grounds that the General Division based its decision on an erroneous finding of fact.

ISSUE

[3] Might there be a reasonable chance of success because the General Division erred by not considering all of the Claimant's evidence?

ANALYSIS

[4] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out the only grounds of appeal that can be considered. They are that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in 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 it¹. In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success². The Claimant's application for leave to appeal must be considered in this context.

¹ Subsection 58(1) of the DESD Act.

² Subsection 58(2) of the DESD Act.

Did the General Division fail to consider all of the evidence?

[5] The Claimant contends that the General Division based its decision on erroneous findings of fact made without regard to a number of documents that she submitted. However, the decision specifically refers to these documents.

[6] The decision states that the supplementary separation agreement could have changed the separation date from July 2010, but did not change it³. The General Division also considered the Claimant's income tax returns and explained why little weight was given to this evidence; the documents were filed late in this process, but even if they had been filed earlier, they would have had less weight than the separation agreement⁴. The decision further states that the General Division was troubled by the fact that the Claimant signed a statutory declaration, knowing it to be false and again preferred the evidence provided by the separation agreement⁵. Finally, the General Division gave little weight to minutes of settlement signed in a different legal proceeding as they did not set out when the parties separated⁶.

[7] The Claimant may disagree with the weight that the General Division gave to the evidence before it. This, however, is not a ground of appeal under the DESD Act. The Appeal Division is not to reweigh the evidence to reach a different conclusion than the General Division did⁷. Accordingly, this ground of appeal does not have a reasonable chance of success on appeal.

[8] I have reviewed the General Division decision and the written record. I am satisfied that the General Division did not overlook or misconstrue any important evidence. I am also satisfied that it made no errors in law and that it observed the principles of natural justice.

³ Paragraph 32 of the decision.

⁴ Paragraph 34 of the decision.

⁵ Paragraph 33 of the decision.

⁶ Paragraph 35 of the decision.

⁷ *Misek v. Canada (Attorney General)*, 2012 FC 890.

CONCLUSION

[9] Leave to appeal is therefore refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	R. Y., self-represented
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