



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. P. v. Minister of Employment and Social Development*, 2018 SST 250

Tribunal File Number: AD-17-650

BETWEEN:

**R. P.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

and

**Z. H.**

Added Party

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

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DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: March 20, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is dismissed.

### **OVERVIEW**

[2] Z. H. married the deceased contributor in December 1978. They later separated and divorced. However, R. P. produced a marriage certificate that demonstrated that she and the deceased were married when he passed away in December 2012. R. P. lived with the deceased contributor. Both Z. H. and R. P. applied for a Canada Pension Plan survivor benefit, Z. H. as the spouse of the deceased and R. P. as his common-law partner. The Minister of Employment and Social Development granted the survivor benefit to R. P. Z. H. appealed this decision to the Social Security Tribunal. The Tribunal's General Division allowed the appeal and decided that Z. H. should be granted this benefit. R. P. is appealing this decision. The appeal is dismissed because the General Division observed the principles of natural justice and considered all of the evidence that was before it.

### **PRELIMINARY MATTERS**

[3] This matter was decided on the basis of the documents filed with the Tribunal, after the following was considered:

- a) The legal issues to be decided are straightforward;
- b) All parties filed written submissions, and there was no need for clarification of them;
- c) None of the parties requested an oral hearing; and

- d) The *Social Security Tribunal Regulations* require that proceedings be conducted as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.<sup>1</sup>

## ISSUES

[4] Did the General Division fail to observe a principle of natural justice when it decided the appeal without an oral hearing?

[5] Did the General Division fail to consider all of the material before it when making its decision?

## ANALYSIS

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides only three narrow grounds of appeal, namely, 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 it.<sup>2</sup> R. P.'s arguments on appeal must be considered in this context.

### **Issue 1: Did the General Division fail to consider a principle of natural justice?**

[7] The principles of natural justice are concerned with ensuring that all parties to a legal proceeding have an opportunity to present their case, know and answer the legal case against them, and have a decision made by an independent decision maker based on the law and the facts. R. P. contends that, because English is not her first language, she was not able to fully present her case in writing and that she would have been able to do so at an oral hearing with the assistance of an interpreter.

[8] The Supreme Court of Canada teaches that what is required to ensure that the principles of natural justice are observed varies depending on the circumstances of each case. An oral

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<sup>1</sup> Paragraph 3(1) of the *Social Security Tribunal Regulations*.

<sup>2</sup> Subsection 58(1) of the DESD Act.

hearing is not always necessary.<sup>3</sup> In this case, the Tribunal corresponded with all parties in English. R. P. corresponded with the Tribunal in English. She filed material supporting her legal position in English. At no time did she indicate that she could not understand documents from the Tribunal or the other parties to this proceeding. Nothing in the documents suggests that she could not adequately communicate in English. R. P.'s representative did not request an interpreter for her. Therefore, I am satisfied that any limitations R. P. had in English did not impair her ability to present her case to the Tribunal or to understand and answer the case against her.

[9] R. P. also argues that she was not aware of the factors that the court says are to be considered to establish a common-law relationship<sup>4</sup> and that, had she known, she would have produced further evidence regarding them. The Tribunal must remain an impartial decision maker. It is not obliged to provide advice to any party before it and should not assist any party to present its case. It is for the parties to choose what evidence they will present to the Tribunal. R. P.'s lack of knowledge of the legal test to be met does not point to an error made by the General Division. The appeal cannot succeed on the basis that she did not have legal knowledge that may have helped her present her case.

[10] Finally, in this regard, R. P. presented additional documentary evidence to bolster her case. An appeal before the Tribunal's Appeal Division is not a new hearing, and new evidence is generally not permitted on an appeal under the DESD Act.<sup>5</sup> Therefore I did not consider this evidence in reaching my decision.

**Issue 2: Did the General Division fail to consider all of the material before it when making its decision?**

[11] One ground of appeal under the DESD Act is that the General Division based its decision on an erroneous finding of fact it made without regard for all of the material before it. To succeed on this ground, R. P. must demonstrate three things: that the General Division made an

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<sup>3</sup> *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

<sup>4</sup> *McLaughlin v. Canada (Attorney General)*, 2012 FC 556.

<sup>5</sup> *Canada (Attorney General) v. O'Keefe*, 2016 FC 503.

erroneous finding of fact, that it was made without regard for all of the material before it, and that the decision was based on this finding of fact.

[12] The finding of fact at issue is that R. P. was living with the deceased, but not in a common-law relationship, for at least one year prior to his death. The General Division is presumed to have considered all of the evidence before it and need not refer to each and every piece of evidence that is presented. Therefore, the General Division's failure to list each and every piece of evidence produced is not an error.

[13] The General Division decision summarized the evidence presented by Z. H.<sup>6</sup> and R. P.<sup>7</sup>. Regarding R. P.'s evidence, the decision specifically refers to bank statements in both R. P.'s and the deceased's names, a Blue Cross card confirming coverage of the deceased under R. P.'s medical plan and other documents. No important evidence was overlooked or misconstrued. I am therefore satisfied that the General Division considered all of the evidence that was before it.

[14] Further, it is for the General Division to weigh the evidence. It is not for the Appeal Division to reweigh the evidence to reach a different conclusion.<sup>8</sup> R. P.'s invitation to re-examine the evidence and reach a conclusion in her favour fails.

[15] Finally, R. P. argues that the General Division should have held an oral hearing as credibility was an issue and could only be assessed through oral testimony. The General Division made no findings on credibility. This is not an error. Nothing in the evidence indicates that any of the parties lacked credibility or that an oral hearing was required to properly assess this.

[16] The finding of fact at issue was based on the material that was before the General Division. The finding was not erroneous because there was an evidentiary basis upon which it was made. The appeal must fail on this basis.

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<sup>6</sup> Paragraphs 8 through 17 of the decision.

<sup>7</sup> Paragraphs 18 through 25 of the decision.

<sup>8</sup> *Simpson v. Canada (Attorney General)*, 2012 FCA 82.

**CONCLUSION**

[17] The appeal is dismissed for these reasons.

Valerie Hazlett Parker  
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES:	K. M., Representative for the Appellant  Jean-Francois Cham, Counsel for the Respondent  J. B., Representative for the Added Party