



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. The Estate of B. T.*, 2018 SST 708

Tribunal File Number: AD-16-1145

BETWEEN:

Minister of Employment and Social Development

Appellant

and

The Estate of B. T.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: June 30, 2018

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The deceased contributor, B. T., passed away in 2008. The Public Guardian and Trustee of Saskatchewan (Saskatchewan) applied for and received a Canada Pension Plan (CPP) death benefit in 2009. The Respondent, the Estate of B. T., applied for the same benefit in 2014.

[3] The Appellant, the Minister of Employment and Social Development, denied this request because the CPP death benefit had already been paid to Saskatchewan.

[4] The General Division found that the Appellant should not have paid the benefit to Saskatchewan because Saskatchewan did not meet the precondition of paying or assuming responsibility for paying the deceased contributor's funeral expenses.

[5] The Appellant is appealing the General Division decision on the grounds of errors of law and serious errors in the findings of fact. The Tribunal's Appeal Division granted leave to appeal on the basis that the appeal had a reasonable chance of success.¹

[6] The appeal hearing was held by teleconference. Both parties participated.

[7] The Appeal Division finds that the General Division committed reviewable errors. The General Division based its decision on an erroneous finding of fact and erred in law in making its decision.

ISSUES

[8] The Appellant raises many grounds of appeal. After addressing the standards of review to be applied by the Appeal Division when it reviews a General Division decision, I will address the specific issues raised by the Appellant as follows:

¹ Leave to appeal decision dated April 10, 2017.

Issue 1: Did the General Division commit serious errors in the findings of fact by concluding that Saskatchewan was “an institution or individual other than the estate?”

Issue 2: Did the General Division err in law by misinterpreting the CPP provisions relating to payment of the death benefit?

Issue 3: If the General Division did err in such a way, should the Appeal Division refer the matter back to the General Division for reconsideration or can the Appeal Division render the decision that the General Division should have rendered?

ANALYSIS

[9] The only grounds of appeal to the Appeal Division are that the General Division erred in law, failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, or 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.²

Standards of Review (or Deference to the General Division)

[10] When the Appeal Division reviews a General Division decision, must it apply the standards of review as adopted in *Dunsmuir v. New Brunswick*³ or the statutory tests that the *Department of Employment and Social Development Act* (DESD Act) associates with issues of natural justice, issues of law, and issues of fact? The applicable approach also determines whether the Appeal Division owes deference to the General Division on these issues.

[11] While the Appellant did not make specific submissions on the standards of review, it argues that the General Division erred in its interpretation of the applicable legal provisions and that the Appeal Division must correctly interpret and apply them. Inherent to these arguments is the premise that the Appeal Division’s role in reviewing these types of questions is to ensure that the decision is correct.

[12] The Respondent did not make specific submissions on this point.

² *Department of Employment and Social Development Act* at s. 58(1).

³ *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190.

[13] There appears to be a discrepancy in relation to the approach that the Appeal Division should take when reviewing appeals of decisions rendered by the General Division⁴ and, if the standards of review must be applied, whether the standard of review for questions of law and natural justice differs from the standard of review for questions of fact and questions of mixed fact and law.

[14] Given that the courts have yet to resolve this apparent discrepancy or to provide clarity on the matter, I will consider this appeal by applying the language of the DESD Act without reference to “reasonableness” and “correctness” as they relate to the standard of review.

[15] The Appeal Division does not owe any deference to the General Division’s conclusions on questions of law and natural justice.⁵ In addition, the Appeal Division may find an error in law whether or not it appears on the face of the record.⁶

[16] The appeal before the General Division turned on the question of whether the Respondent is entitled to receive a CPP death benefit, a question of mixed fact and law.

[17] Where an error of mixed fact and law committed by the General Division discloses an extricable legal issue, the Appeal Division may intervene under s. 58(1) of the DESD Act.⁷

[18] The appeal before the Appeal Division rests on distinct questions of errors of law and serious errors in the findings of fact, each of which discloses an extricable legal issue.

Issue 1: Did the General Division commit serious errors in the findings of fact by concluding that Saskatchewan was “an institution or individual other than the estate?”

[19] The General Division made an erroneous finding of fact when it concluded that Saskatchewan was “an institution or individual other than the estate.”

⁴ *Canada (Attorney General) v. Paradis* and *Canada (Attorney General) v. Jean*, 2015 FCA 242; *Maunder v. Canada (Attorney General)*, 2015 FCA 274; *Hurtubise v. Canada (Attorney General)*, 2016 FCA 147; *Canada (Attorney General) v. Peppard*, 2017 FCA 110; *Quadir v. Canada (Attorney General)*, 2018 FCA 21.

⁵ *Paradis*, *supra* note 4 at para. 19.

⁶ DESD Act at s. 58(1)(b).

⁷ *Garvey v. Canada (Attorney General)*, 2018 FCA 118.

[20] This conclusion is parenthetical in the General Division decision and is contained in the sentence:

Subsection 64(a) sets out the specific condition that the institution or individual other than the estate (Saskatchewan in this case) pay or assume responsibility for payment of the deceased contributor (B. T.)'s funeral expenses, in order to receive the death benefit.⁸

[21] This conclusion is contrary to the General Division's recitation of the background facts, which described Saskatchewan as "a court appointed administrator of B. T.'s estate."⁹

[22] Was Saskatchewan "the estate" or "an institution or individual other than the estate?"

[23] The appeal record contains Saskatchewan's application for the death benefit.¹⁰ That application indicates that the benefit is being applied for "as administrator appointed by the court"¹¹ and that the applicant is the "estate administrator" of the deceased¹² and is the "Official Administrator for the Estate of B. T."¹³

[24] There is no documentary evidence to the contrary. The Respondent's testimony at the General Division hearing was given by B. T.'s sister, H. G.. While she was perplexed as to how Saskatchewan became administrator of the estate when B. T. had three living relatives, she did not provide any evidence to contradict that Saskatchewan was the official administrator of the estate when it applied for the death benefit.

[25] Therefore, the General Division's finding that the Saskatchewan was "an institution or individual other than the estate" was an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it. (Saskatchewan was "the estate" because it was the court appointed administrator of the estate.)

[26] This erroneous finding of fact was used in the General Division's interpretation and application of the CPP provisions to the situation in this case.

⁸ General Division decision at para. 20.

⁹ *Ibid.* at para. 2.

¹⁰ GD2-5 to 7.

¹¹ *Ibid.* at box 12.

¹² *Ibid.* at box 14.

¹³ *Ibid.* at section D.

[27] The General Division based its decision on this finding and, thereby, committed a reviewable error under s. 58(1)(c) of the DESD Act.

[28] I note that the Respondent submitted at the Appeal Division hearing that Saskatchewan should not have been appointed as the administrator of the estate and that the Appellant should have determined whether there was someone “more relevant” than the public trustee to whom payment should be made. The Respondent submitted that Saskatchewan, as the public trustee who received the death benefit, should be ordered to return the payment so that the Appellant could pay it to the family members who paid the deceased’s funeral expenses.

[29] The testimony given at the General Division hearing was that the deceased’s mother and sister paid for the funeral expenses. The Appellant does not dispute this evidence and expressed sympathy in the circumstances. I am also sympathetic to the Respondent’s situation.

[30] However, this Tribunal does not have authority over the public trustee or the Saskatchewan court that appointed the official administrator of the deceased’s estate in 2009. The Tribunal is established by legislation and has only the powers that are conferred to it by that legislation. It does not have the same inherent powers that superior courts do. There are no provisions of the DESD Act or the CPP that give the Tribunal authority to order Saskatchewan to return the death benefit that it received as administrator of the estate.

[31] The Respondent also submitted that the 60-day period for an estate to apply for a death benefit is not long enough and argued that no one faced with the loss of a family member should be expected to work through the estate administration process and meet this time limit. The Respondent argues that such a short deadline gives the opportunity to the public trustee to apply for the benefit before “more legitimate” people do and that the Tribunal should interpret the CPP provisions as requiring the Appellant to make a reasonable inquiry of next of kin before paying out the death benefit.

[32] The Tribunal cannot disregard the provisions of the CPP, as the Applicant argues, nor can it change the time periods that the legislature has set. Changes to the CPP cannot be requested by way of an appeal to the Tribunal. The Tribunal does not have jurisdiction to make legislative changes. It must interpret the applicable legislation within the authority that it has.

Issue 2: Did the General Division err in law by misinterpreting the CPP provisions relating to payment of the death benefit?

[33] I find that the General Division erred in law by misinterpreting the CPP provisions relating to payment of the death benefit.

[34] The General Division found that a precondition to payment of the death benefit to Saskatchewan under s. 71(2)(b) of the CPP was that Saskatchewan pay or assume responsibility for payment of the deceased contributor's funeral expenses.

[35] However, this conclusion did not take into account the overall mechanics for payment of death benefits under the CPP and was based on the erroneous finding of fact that Saskatchewan was a person or body other than the estate.

[36] The CPP and CPP Regulations set out the following regarding payment of death benefits:

- a) The death benefit cannot be paid unless it is applied for (i.e. it is not automatically paid on a contributor's death);¹⁴
- b) As a general rule, the death benefit is paid to the estate of the deceased contributor;¹⁵
- c) Where there is no estate or the estate has not applied for the death benefit within 60 days after the contributor's death, an exception applies and the Minister may pay the death benefit to a person or body that is not the estate;¹⁶
- d) Where there is no estate or when the estate has not applied within 60 days, then someone else can apply for payment of the death benefit, and there is an order of priority stated in the case of more than one application by such a person or body.¹⁷
- e) The death benefit can only be paid once.¹⁸

¹⁴ CPP at s.60.

¹⁵ *Ibid.* at s.71(1).

¹⁶ *Ibid.* at s.71(2).

¹⁷ CPP Regulations at s. 64(1).

¹⁸ CPP at s. 71(3).

[37] Here, the estate did not apply for the death benefit within 60 days of the contributor's death. In July 2009, after the 60-day period, Saskatchewan applied for the death benefit. There is no dispute on these facts. Saskatchewan applied as the administrator of the estate.¹⁹

[38] The General Division interpreted s. 64 of the CPP Regulations as follows:

Subsection 64(a) sets out the specific condition that the institution or individual other than the estate (Saskatchewan in this case) pay or assume responsibility for payment of the deceased contributor (B. T.)'s funeral expenses, in order to receive the death benefit. In the present case, Saskatchewan did not meet this precondition [...] Not surprisingly, there is no evidence anywhere in the appeal file that Saskatchewan paid or assumed responsibility for B. T.'s funeral expenses. The only evidence related to payment of B. T.'s funeral expenses is that given under oath by H. G., who stated that both she and B. T.'s late mother, as B. T.'s next of kin, paid these expenses.

[39] The General Division concluded that Saskatchewan was an institution or individual other than the estate and, as such, had to fulfil the condition of paying or assuming responsibility for paying the deceased contributor's funeral expenses in order to receive the death benefit. The first conclusion was an erroneous finding of fact and the second conclusion was an error of law.

[40] The estate did not apply for the death benefit within 60 days of the contributor's death, but it did apply after the 60-day period, in July 2009. Saskatchewan applied as the estate of the deceased contributor, not as someone other than the estate.

[41] As the estate, Saskatchewan's application for the death benefit was not subject to the precondition that Saskatchewan pay or assume responsibility for payment of the deceased contributor's funeral expenses (or provide evidence that it did).

[42] The Appellant's obligation to pay the death benefit to the estate upon the estate's application extends beyond the 60-day period,²⁰ and the Appellant paid the benefit to the estate under the general rule: the death benefit is paid to the estate of the contributor.²¹

¹⁹ See Issue 1, above.

²⁰ *Cormier v. Canada (Minister of Human Resources Development)*, 2002 FCA 514.

²¹ CPP at s.71(1).

[43] I find that the General Division erred in law by concluding that Saskatchewan did not meet the precondition required of “an institution or individual other than the estate” under s. 64(1)(a) of the CPP Regulations.

[44] Having found reviewable errors, I will consider what the appropriate remedy would be.

Issue 3: If the General Division did err in such a way, should the Appeal Division refer the matter back to the General Division for reconsideration or can the Appeal Division render the decision that the General Division should have rendered?

[45] I have found that the General Division made a serious error in its finding of facts and that it erred in law in making its decision.

[46] The Appellant submits that the evidence that was before the General Division is available to the Appeal Division and, therefore, it would be more expedient for the Appeal Division to render the decision that the General Division should have rendered than to refer the matter back to the General Division.

[47] The Respondent submits that an error was made in that Saskatchewan was appointed the administrator of the estate and that the Appellant paid the death benefit to an entity that was not eligible to be appointed administrator of the estate. As a result, the Respondent submits that the Appellant should be ordered to pay the death benefit to the Respondent.

[48] I find that the appeal record is complete and I am able to render the decision that the General Division should have rendered.

[49] Saskatchewan applied for the death benefit as a court ordered administrator of the estate in July 2009, almost five years before the Respondent applied (as a subsequent court appointed administrator of the estate) in June 2014. The Appellant paid the death benefit to the estate—at the time administered by Saskatchewan—in accordance with the CPP. The death benefit can only be paid once. Therefore, the death benefit cannot be paid to the Respondent.

CONCLUSION

[50] The appeal is allowed.

Shu-Tai Cheng
Member, Appeal Division

HEARD ON:	November 30, 2017
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Sylvie Doire, Counsel for the Appellant H. G., Representative for the Respondent