



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. S. v. Minister of Employment and Social Development*, 2018 SST 769

Tribunal File Number: AD-18-395

BETWEEN:

**J. S.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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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: July 30, 2018

## DECISION AND REASONS

### DECISION

[1] Leave to appeal is refused.

### OVERVIEW

[2] J. S. (Claimant) started to work for the Office of the Superintendent of Financial Institutions in 1982. In July 2002, he left work because of depression. He took sick leave and then received long-term disability payments before his employment ended. He began to receive a Canada Pension Plan retirement pension in November 2016.

[3] The Claimant disagreed with the decision by the Minister of Employment and Social Development (Minister) regarding both the amount of retirement pension that is payable and the date that it should begin to be paid to him. In particular, the Claimant takes issue with his Record of Employment (ROE) and argues that the Minister should not have accepted his earnings as set out in the ROE to calculate the amount of his Canada Pension Plan retirement pension. He appealed the Minister's decisions to the Tribunal.

[4] The Tribunal's General Division dismissed the appeal on the basis that it has no jurisdiction to order the Minister to further investigate issues regarding the ROE, to request a ruling from the Minister of National Revenue on this matter, or to gather evidence regarding the Claimant's earnings from other governments or private agencies. The General Division also determined that it had no authority to review the conduct of those the Claimant wished to have added as parties so that the amount of his retirement pension and/or effective date of payment would change. Leave to appeal is refused because the Claimant has not presented a ground of appeal under the *Department of Employment and Social Development Act* (DESD Act) upon which the appeal has a reasonable chance of success.

### ISSUES

[5] Does the appeal have a reasonable chance of success on the basis that the General Division failed to observe a principle of natural justice or failed to exercise its jurisdiction regarding one or more of the following matters?

- a) The General Division failed to inquire as to whether the Claimant's employment termination was involuntary, voluntary, or induced by fraud;
- b) The Minister did not present evidence that it had requested a ruling from the Canada Revenue Agency or the Tax Court regarding the ROE after a reinstatement order was made;
- c) The Minister declined to provide a corrected ROE; and
- d) The Minister's determination is inconsistent with other legislation and treaties.

[6] Does the appeal have a reasonable chance of success on the basis that the General Division erred by failing:

- a) to add other agencies as parties to the appeal?
- b) to decide that the 2004–2006 contribution exclusion period would satisfy criteria to advance a long-term disability claim to permit a “contribution holiday”?
- c) to decide that the Claimant would have earned benefits for Canada Pension Plan and Employment Insurance purposes because the termination of his employment was wrongful and because he had made a written request for contributions to these plans to be made?
- d) to decide whether, if other agencies involved declined to enforce the Claimant's rights, the Minister and Tribunal could consent to other periods being contributory?
- e) to decide whether periods when the Claimant was outside Canada could be found to be contributory periods?

## **ANALYSIS**

[7] The DESD Act governs the Tribunal's operation. It sets out only three grounds of appeal that the Appeal Division can consider. 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 it.<sup>1</sup> In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.<sup>2</sup> So, to be granted leave to appeal, the Claimant must present at least one ground of appeal that falls under the DESD Act and upon which the appeal may have a reasonable chance of success. His arguments are considered below.

### **Issue 1: Natural Justice and Jurisdiction**

[8] The principles of natural justice are concerned with ensuring that parties to an appeal have the opportunity to present their case, know and respond to the other party's case, and have a decision made by an independent decision-maker based on the law and the facts.

[9] I have reviewed the General Division decision and the written record. Nothing in this material suggests that the Claimant did not have a full opportunity to present his case and answer the Minister's case. The Claimant filed numerous lengthy submissions with the Tribunal.<sup>3</sup> He included a number of documents filed with courts and other quasi-judicial agencies with his submissions. The General Division also held a hearing where the Claimant and his representative were present, presented evidence, and made oral submissions. The General Division decision summarizes this evidence. It is also presumed to have considered all of the evidence that was before it and need not mention every single piece of evidence in the decision.<sup>4</sup> There is no reasonable chance that the appeal will succeed on the basis that the General Division failed to observe a principle of natural justice.

[10] The Claimant argues that the General Division failed to exercise its jurisdiction to assess whether the end of his employment was voluntary, involuntary, or induced by fraud. However, the General Division has no legal authority to decide this issue. The General Division decision correctly states that it has only the jurisdiction granted to it by legislation.<sup>5</sup> The Tribunal has legal authority to decide only the following matters under the *Canada Pension Plan*: whether any benefit is payable to a claimant or its amount, whether a person is eligible for a division of unadjusted pensionable earnings or its amount, whether a person is eligible for an assignment of

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<sup>1</sup> DESD Act s. 58(1)

<sup>2</sup> DESD Act s. 58(2)

<sup>3</sup> GD3, GD4, GD5, GD6, GD9, and GD10

<sup>4</sup> *Simpson v. Canada (Attorney General)*, 2012 FCA 82

<sup>5</sup> General Division decision para. 14

a retirement benefit, or whether a penalty should be imposed.<sup>6</sup> It does not include any legal authority to decide the nature of the end of the Claimant's employment. Therefore, the General Division made no error in failing to consider this matter. Leave to appeal cannot be granted on this basis.

[11] The Claimant also asserts that the General Division failed to exercise its jurisdiction because the Minister did not present evidence that it had requested a ruling from the Canada Revenue Agency or the Tax Court regarding the ROE, the Minister did not provide a corrected ROE, and the Minister's decision was inconsistent with legislation and treaties. The grounds of appeal under the DESD Act are concerned with errors made by the General Division. Any error that the Minister may have made does not fall under any ground of appeal in the DESD Act.

[12] In addition, the General Division correctly states that any entry relating to earnings or contributions in a ROE is conclusively presumed to be accurate after four years from the end of the year in which the entry was made.<sup>7</sup> The General Division correctly stated the process to request a correction to a ROE, stated that the Minister took those steps, and maintained its decision. The General Division has no legal authority to change this, to require the Minister or another entity to take any other steps regarding this issue, or to change the decision that has been made regarding the ROE. Leave to appeal cannot be granted on the basis of these grounds of appeal.

## **Issue 2: Adding parties**

[13] The Claimant argues that the General Division also erred because it failed to add other agencies and parties to the appeal. Although the Claimant states that this was unreasonable, he fails to explain why this was so. He requests that they be added so that the Tribunal might examine allegations regarding when he contributed to the *Canada Pension Plan* and whether other time periods could be deemed to be contributory periods, among other issues.

[14] The General Division made an interlocutory order refusing to add such parties as the Office of Superintendent of Financial Institutions, Canada, and the Chief Actuary; the Public

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<sup>6</sup> DESD Act s. 64(2)

<sup>7</sup> General Division decision paras. 15–17

Service Labour Relations Board; the Professional Institute of the Public Service of Canada; the Ministry of the Attorney General of Ontario, Constitutional Law Branch; the Canadian Human Rights Commission; and the Sociale Verzekeringsbank Nederlands via the Honourable Ambassador for the Kingdom of the Netherlands to Canada. The General Division decision<sup>8</sup> correctly stated the legal test for a party to be added to an appeal. It considered the *Social Security Tribunal Regulations*, which permit the adding of a party who has a direct interest in an appeal and the relevant court decisions, and applied this to the facts before it.<sup>9</sup> The General Division refused to add these agencies as parties because it has no authority to issue subpoenas, no power to conduct investigations, and no power to adjudicate on decisions made by other government agencies and/or by private entities.<sup>10</sup> These agencies do not have a direct interest in the appeal. The Claimant requests that the Appeal Division reconsider adding parties so that his Canada Pension Plan contribution period may be changed. This is not something that the Appeal Division has any legal authority to do. This argument does not point to any error made by the General Division. Leave to appeal cannot be granted on this basis.

### **Other Issues**

[15] The Claimant has presented a number of other grounds of appeal, including that the General Division erred because it failed to make a decision regarding his contribution period from 2004 to 2006; failed to decide that benefits would have been earned for *Canada Pension Plan* and Employment Insurance purposes because the termination of his employment was wrongful and a written request had been made for contributions to these plans to be made; failed to decide whether the Minister and Tribunal could consent to other periods being contributory, if other agencies involved declined to enforce the Claimant's rights; and failed to decide whether his time outside of Canada could be included in his contributory period. Leave to appeal cannot be granted on the basis of these arguments. The Tribunal has no jurisdiction to grant the remedy that the Claimant is seeking. The General Division did not make an error when it neglected to make decisions it had no jurisdiction to make.

[16] I have reviewed the General Division decision and the written record. The General

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<sup>8</sup> General Division interlocutory decision dated October 2017

<sup>9</sup> *Ibid.* paras. 18–24

<sup>10</sup> General Division decision para. 21

Division did not overlook or misconstrue any important information. It made no error of law and observed the principles of natural justice.

**CONCLUSION**

[17] Leave to appeal is refused.

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVE:	J. S., self-represented
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