



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *F. S. v. Minister of Employment and Social Development*, 2018 SST 832

Tribunal File Number: AD-18-428

BETWEEN:

F. S.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: August 24, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] F. S. (Claimant) and her husband moved to Canada from Iran in 2008. The Claimant's husband worked and contributed to the Canada Pension Plan (CPP) for five years, from 2011 to 2015. He died in 2016. The Claimant applied for a CPP survivor's benefit.

[3] The Minister of Employment and Social Development refused this application because the deceased had not contributed to the CPP for 10 years. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division summarily dismissed the appeal for the same reason. The Claimant's appeal is dismissed because the General Division made no errors upon which the appeal could succeed.

PRELIMINARY MATTER

[4] The appeal was decided on the basis of the documents filed with the Tribunal, after the following were considered:

- a) The legal issue to be decided is straightforward;
- b) Neither party filed any written submissions apart from the Claimant's Notice of Appeal;
- c) Neither party requested an oral hearing; and
- d) The *Social Security Tribunal Regulations* require that proceedings be completed as quickly as the circumstances and the considerations of fairness and natural justice permit.¹

¹ *Social Security Tribunal Regulations* s. 3(1)

ISSUE

[5] Did the General Division make an error under the *Department of Employment and Social Development Act* (DESD Act) such that the Appeal Division should intervene?

ANALYSIS

[6] The DESD Act governs the Tribunal's operation. It sets out only three narrow 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.² In addition, the General Division must dismiss an appeal if it has no reasonable chance of success.³

[7] The Claimant did not dispute any of the facts upon which the General Division based its decision. The year the Claimant's husband came to Canada and the years during which he made contributions to the CPP are not in dispute. The General Division therefore did not base its decision on any erroneous findings of fact.

[8] The General Division decision correctly states that an appeal must be summarily dismissed if it has no reasonable chance of success.⁴ In order for a survivor's pension to be payable, the deceased must have contributed to the CPP for at least 10 years.⁵ The Claimant's husband contributed for five years.⁶ In addition, Canada does not have a treaty with Iran, so his work in that country cannot be considered for the purposes of the survivor benefit. The General Division applied the law to the facts before it to reach its decision. It made no error in law.

[9] There is also no suggestion that the General Division failed to observe the principles of natural justice.

[10] The Claimant argues, as she did before the General Division, that the law should be changed, because her husband was not present in Canada for 10 years before he died and could

² DESD Act s. 58(1)

³ *Ibid.* s. 53(1)

⁴ General Division decision, para. 3

⁵ General Division decision, paras. 11, 12

⁶ *Ibid.* para. 13

not have contributed to the CPP for the minimum period required under the legislation. The General Division correctly stated that the Tribunal is created by legislation and, as such, has only the legal authority granted to it under the DESD Act. It has no authority to change the legislation, or to allow an appeal based on compassion or extenuating circumstances. The appeal cannot be allowed on the basis of this argument for the same reasons that the General Division could not grant the Claimant any relief.

CONCLUSION

[11] I am very sympathetic to the Claimant's circumstances and her financial distress. However, the appeal must be dismissed.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
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