



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. W. v. Minister of Employment and Social Development and C. D.*, 2018 SST 922

Tribunal File Number: AD-18-271

BETWEEN:

K. W.

Appellant

and

Minister of Employment and Social Development

Respondent

and

C. D.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: September 20, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] K. W. (Claimant) and C. D. lived in a common-law relationship that ended in September 2008. In January 2016, the Claimant applied for a division of unadjusted pensionable earnings (DUPE). The Minister of Employment and Social Development refused the application because it was made more than four years after the relationship ended. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division summarily dismissed the appeal because it found that it had no reasonable chance of success. The Claimant's appeal of the General Division decision is dismissed because the General Division did not fail to observe any principles of natural justice and made no error in law when it did not consider the Claimant's special circumstances.

PRELIMINARY MATTERS

[3] This appeal was decided based on the documents filed with the Tribunal after the following was considered:

- a) The legal issue to be decided is straightforward.
- b) The parties were given additional time to file written submissions and documents.
- c) Neither party requested an oral hearing for the appeal.
- d) The *Social Security Tribunal Regulations* require that proceedings be conducted as quickly as the circumstances and the considerations of fairness and natural justice permit.

[4] The Claimant sent some medical documents to the Tribunal that she said supported her position on appeal. She requested that these documents not be shared with the other parties. I requested written submissions on whether these documents should be accepted by the Tribunal

and treated as confidential. After receiving submissions, I decided that the documents were new evidence. New evidence is not normally considered on appeal under the *Department of Employment and Social Development Act* (DESD Act).¹ The filing of medical documents that may support the Claimant's claim that she suffers from various illnesses does not fall into any of the exceptions to this rule. Therefore, the Claimant's medical documents were not included in the Tribunal's written record and were returned to the Claimant.

ISSUES

[5] Did the General Division fail to observe a principle of natural justice by basing its decision on the timing of the Claimant's application without considering her special circumstances?

[6] Did the General Division make an error in law by failing to apply equitable principles when it made its decision?

ANALYSIS

[7] The Social Security Tribunal is a statutory tribunal. So, its legal authority is limited to what is given to it by its governing legislation. The DESD Act governs the Tribunal's operation; the DESD Act sets out only three grounds of appeal that the Appeal Division can consider. These grounds 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 The Claimant's arguments are considered below in this context.

Issue 1: Did the General Division fail to observe a principle of natural justice by basing its decision on the timing of the Claimant's application without considering her special circumstances?

[8] The principles of natural justice are concerned with ensuring that parties to an appeal have an opportunity to present their case to the Tribunal, to know and answer the case against them, and to have a decision made by an impartial decision-maker based on the facts and the

¹ *Canada (Attorney General) v. O'Keefe*, 2016 FC 503

² DESD Act s. 58(1)

law. The Claimant argues that the General Division failed to observe these principles in two ways.

[9] First, the Claimant argues that the General Division failed to observe a principle of natural justice because it looked only at the fact that her application for a DUPE was made approximately eight years after the end of the relationship and did not consider her particular circumstances. However, the General Division decision correctly states that the *Canada Pension Plan* (CPP) requires that an application for a DUPE be made within four years of the end of a common-law relationship, or at a later time, if both partners agree in writing. There is no exception to this rule that would permit the General Division to consider the Claimant's special or extraordinary circumstances. Therefore, the General Division did not fail to observe a principle of natural justice when it failed to consider the Claimant's special circumstances. It had no authority to consider them.

[10] Second, the Claimant argues that the General Division was biased because it failed to consider her circumstances, including her medical condition. However, the CPP does not allow the General Division to consider her medical condition. The Claimant has presented no other reason that suggests that the General Division was biased. Therefore, the General Division was not biased when it failed to consider this.

[11] The appeal must fail on this basis.

Issue 2: Did the General Division make an error in law by failing to apply equitable principles when it made its decision?

[12] The Claimant also argues that the General Division erred because it failed to consider any equitable principles when it made its decision in this case. However, the Tribunal has no legal authority to consider equitable principles because it is created by statute. The decision correctly states that the General Division must interpret and apply the provisions of the CPP.³

[13] The General Division correctly set out the requirement under the DESD Act to summarily dismiss an appeal that has no reasonable chance of success.⁴ The decision correctly set out the undisputed facts regarding the end of the relationship in September 2008, the

³ General Division decision para. 9

⁴ *Ibid.* para. 13

Claimant's application in January 2016, and C. D.'s refusal to waive the four-year time limit within which an application for a DUPE had to be made.⁵ The General Division correctly applied the law, and it decided that the Claimant was ineligible for a DUPE under the CPP.⁶

Consequently, the appeal to the General Division had no reasonable chance of success and the appeal should have been summarily dismissed, which it was. The General Division made no error in law. The appeal cannot succeed on this basis.

CONCLUSION

[14] For these reasons, the appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES:	K. W., Appellant Matthew Vens, Counsel for the Respondent C. D., Added Party

⁵ General Division decision para. 15

⁶ *Ibid.* para. 16