



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *O. B. v. Minister of Employment and Social Development*, 2018 SST 983

Tribunal File Number: AD-18-436

BETWEEN:

**O. B.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

---

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

---

DECISION BY: Kate Sellar

DATE OF DECISION: October 11, 2018

## DECISION AND REASONS

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] O. B. (the Claimant), was married. His late wife died on September 1, 2014. His late wife's adult children looked after the details of the funeral, and the Claimant grieved the loss of his late wife. The Claimant explains that he did not know he was entitled to apply for a survivor's pension under the *Canada Pension Plan* (CPP) and that the Minister did not advise him in a timely manner of the availability of that pension either. When he learned about his entitlement years after his late wife's death, the Claimant applied for the survivor's pension under the CPP on April 20, 2017.

[3] The Claimant's application for the survivor's pension was granted, and he received benefits retroactive to May 2016. The Claimant then requested a reconsideration, seeking benefits retroactive to his wife's death in September 2014. The Claimant calculates that if his benefits had been retroactive to September 2014, he would have received over \$3,000 more than he has received, which is a significant amount of money—he is a senior on a fixed income.

[4] The Minister denied the Claimant's request for reconsideration. The Claimant appealed to this Tribunal. The General Division summarily dismissed his appeal in December 2017, finding that the Claimant's appeal had no reasonable chance of success because the General Division does not have the authority under the CPP to approve payment of a survivor's benefit retroactive to the date of the spouse's death. The Claimant made his application for the survivor's pension late, and, given the timing of his application, his survivor's pension started as early as is allowed under the legislation.

[5] The Appeal Division must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) such that an appeal should be granted.

[6] The General Division did not make an error under the DESDA. The appeal is dismissed.

## ISSUE

[7] Did the General Division make an error by failing to observe a principle of natural justice or by refusing to exercise its jurisdiction when it summarily dismissed the Claimant's appeal for a survivor's pension retroactive to his wife's death?

## ANALYSIS

### **The Appeal Division's review of the General Division's decision**

[8] The General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.<sup>1</sup> The question the Tribunal must answer is whether it is plain and obvious on the record that the appeal is bound to fail. The question is **not** whether the Tribunal must dismiss the appeal after considering the facts, the case law, and the parties' arguments. Rather, the question is whether the appeal is destined to fail regardless of the evidence or arguments that might be submitted at a hearing.<sup>2</sup>

[9] The Appeal Division does not provide an opportunity for the parties to reargue their case in full at a new hearing. Instead, the Appeal Division conducts a review of the General Division's decision to determine whether it contains errors. That review is based on the wording of the DESDA, which sets out the grounds of appeal for cases at the Appeal Division.

[10] The DESDA states that the General Division makes an error when it fails to observe a principle of natural justice or otherwise acts beyond or refuses to exercise its jurisdiction.<sup>3</sup>

### **Did the General Division make an error when it summarily dismissed the Claimant's appeal for a CPP survivor pension retroactive to his wife's death?**

[11] The General Division did not make an error under the DESDA. The Claimant has not identified a principle of natural justice that the General Division failed to uphold, and the General Division acted within its jurisdiction.

---

<sup>1</sup> DESDA, s. 53; *Miter v. Canada (Attorney General)*, 2017 FC 262.

<sup>2</sup> *A. Z. v. Minister of Employment and Social Development*, 2018 SST 298.

<sup>3</sup> DESDA, s. 58(1)(a).

[12] The CPP explains how the payment of a survivor's pension works:

**72** Subject to section 62, if payment of a survivor's pension is approved, the pension is payable for each month commencing the month following

(a) the month in which the contributor died, in the case of a survivor who at the time of the death of the contributor had reached thirty-five years of age or was a survivor with dependent children,

(b) the month in which the survivor became a survivor who, not having reached sixty-five years of age, is disabled, in the case of a survivor other than a survivor described in paragraph (a), or

(c) the month in which the survivor reached sixty-five years of age, in the case of a survivor other than a survivor described in paragraph (a) or (b).

**However, in no case is the pension payable earlier than for the twelfth-month preceding the month following the month in which the application was received.** [Emphasis added]

[13] The Claimant argues that the General Division failed to observe a principle of natural justice or refused to exercise its jurisdiction and, therefore, made an error that the Appeal Division can address. The Claimant acknowledges that the language in the CPP about the payment of the survivor's pension quoted above is binding. However, he argues that:

Service Canada – Income Securities and the Government of Canada should make every effort to inform citizens of benefits they are eligible for. There was no effort on the part of the Canada Pension Plan to advise me of any potential benefits despite both my deceased wife and myself being coded in the system as “Married Pensioners” [...]. Service Canada was provided with the death certificate, yet no one alerted me of my eligibility to receive pension money, even when my late wife and I were recorded as spouses in the Income Securities files. I would like to see that our Canadian Government let people know of Survivor's Benefits and entitlement.<sup>4</sup>

[14] The Minister did not provide submissions, and the time for doing so has now passed. The General Division did not make an error in summarily dismissing the appeal—the appeal had no reasonable chance of success. When a person qualifies for a survivor's benefit, it must be paid

---

<sup>4</sup> AD1A-2.

according to the CPP, which states that payment is effective the month the contributor died,<sup>5</sup> the month the survivor became disabled,<sup>6</sup> or the month the survivor turns 65 years of age.<sup>7</sup> Furthermore, in no case is the survivor's pension payable earlier than 11 months before the Minister receives the application.

[15] Because of this rule and the timing of the Claimant's application for the survivor's pension, the Claimant was not entitled to payments beginning the month of his late wife's death. However, the Claimant was entitled to, and was ultimately approved to receive, the maximum retroactive benefit available under the law according to his circumstances; this meant the survivor's pension payments were effective May 2016.

[16] The General Division did not fail to observe a principle of natural justice.

[17] The Claimant seems to be making an argument about the lack of fairness in the federal government's processes for providing notice of possible eligibility for a survivor's pension. However, his arguments are not about whether natural justice was afforded **by the General Division**, so his arguments do not point to an error by the General Division under the DESDA that the Appeal Division can consider.

[18] The General Division did not fail to exercise its jurisdiction.

[19] The General Division's analysis of its own jurisdiction is correct: there is no discretion in the CPP that would allow this Tribunal to find that the Claimant was entitled to payment another way based on compassionate grounds or based on an argument about the need for the Minister to provide notice to surviving spouses.<sup>8</sup> The General Division has the authority to decide on any question of law or fact necessary in deciding on an application under the DESDA.<sup>9</sup> However, when those applications concern the CPP survivor's pension, decisions are limited to whether the benefit is payable or the amount to be paid.<sup>10</sup> This Tribunal does not have any discretion to change the date of payment and thereby vary the amount payable because the plain reading of the

---

<sup>5</sup> If the survivor was 35 years of age or older or had dependent children when the contributor died.

<sup>6</sup> If the survivor was under 35 years of age and had no dependent children when the contributor died.

<sup>7</sup> If the survivor was not eligible before that time.

<sup>8</sup> General Division decision, para. 16.

<sup>9</sup> DESDA, s. 64(1).

<sup>10</sup> DESDA, s. 64(2).

legislation shows that the Claimant's payments started at the correct time. The General Division did not fail to exercise its jurisdiction because it does not have the jurisdiction to change the Claimant's date of payment in this case.<sup>11</sup>

[20] The Claimant is not represented. He has received some assistance from the office of his Member of Parliament in his communications with this Tribunal. That office can likely provide him with more information about the options available to advocate for the kind of systemic change he seeks in terms of the government providing timely notice to people who may be entitled to the CPP survivor's pension.

**CONCLUSION**

[21] The appeal is dismissed.

Kate Sellar  
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
SUBMISSION:	O. B., Appellant

---