



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. D. v. Minister of Employment and Social Development*, 2018 SST 1106

Tribunal File Number: AD-18-637

BETWEEN:

C. D.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: November 9, 2018

DECISION AND REASONS

DECISION

[1] The application to rescind or amend the leave to appeal decision is refused.

OVERVIEW

[2] C. D. (Applicant) resided with the deceased contributor from 1996 until at least 2012. The deceased passed away in February 2015. The Applicant applied for a Canada Pension Plan survivors' benefit on the basis that she was his common-law partner. The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to this Tribunal. The Tribunal's General Division held a teleconference hearing and dismissed the Claimant's appeal. It decided that the Claimant was not the deceased's common-law partner at the time of his death.

[3] The Claimant applied for leave to appeal this decision. The Tribunal's Appeal Division refused leave to appeal because the appeal did not have a reasonable chance of success. The General Division did not fail to observe the principles of natural justice or make an error in jurisdiction; it did not make an error in law; and it did not base its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material that was before it.

[4] The Claimant now seeks to have the Appeal Division decision rescinded or amended based on new material facts. The application is refused because the Claimant has not presented any new facts under the *Department of Employment and Social Development Act* (DESD Act).

PRELIMINARY MATTER

[5] This application was decided based on the documents filed with the Tribunal after considering the following:

- a) The legal issue to be decided is straightforward;
- b) The parties have filed detailed submissions on the legal issue;

- c) There are no gaps in the information;
- d) The *Social Security Tribunal Regulations* require that proceedings be concluded as quickly as the circumstances and the considerations of fairness and natural justice permit.¹

ANALYSIS

The DESD Act governs the Tribunal's operation. It states that the Tribunal may rescind or amend a decision that it gives about a particular application if a new material fact is presented that could not have been discovered when the previous decision was made with reasonable diligence.² The Federal Court of Appeal instructs that this means the following:³

(1) The Claimant must present a fact that existed when the leave to appeal decision was made but was not discoverable before that time through due diligence (the “discoverability test”); and

(2) The evidence must reasonably be expected to affect the result of the previous decision (the “materiality test”). In this case, this means that the new fact must affect the decision to deny leave to appeal.

[6] Under the DESD Act, there are only three narrow grounds of appeal upon which leave to appeal can be granted. 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.⁴ The new evidence that the Claimant presents is considered below in this context.

a) Engagement Ring Receipt

[7] The Claimant presents a copy of a receipt for the purchase of an engagement ring, dated December 2014, which, she argues, supports her position that she and the deceased continued to be in a relationship. The receipt is dated long before the Appeal Division decision was made. It

¹ *Social Security Tribunal Regulations*, at s 3(1)

² DESD Act, at s 66(1)

³ *Canada (Attorney General) v MacRae*, 2008 FCA 82

⁴ DESD Act, at s 58(1)

was therefore discoverable at that time. In addition, it does not set out who purchased the ring. Therefore, this would not have likely affected the decision that was made. This document does not meet the legal test for new facts under the DESD Act.

b) Ontario Driver's Licence

[8] The Claimant also presents a copy of the deceased's Ontario driver's licence, which shows his address in X, Ontario. This document was not presented to the General Division. However, the General Division received evidence regarding the fact that the Claimant had an Ontario driver's licence that was suspended for health reasons.⁵ Therefore, the presentation of the actual licence is not new evidence and would not have affected the leave to appeal decision that was made. It is not a new fact.

c) Highway 407 Bill and Service Canada Inquiry from January 2016

[9] The Claimant presents a copy of a Highway 407 invoice and a record of a Service Canada inquiry from January 2016 as new facts. However, these documents were included in the written record before the General Division.⁶ Therefore, they are not new facts.

d) Text Messages

[10] The Claimant presents copies of text messages exchanged between herself and the deceased in July and August 2014. She states that they could not be presented beforehand because the phone was broken. This is reasonable. However, the Claimant testified at the hearing that she remained in contact with the deceased. The General Division considered this in making its decision.⁷ Therefore, the presentation of text messages is not a new fact because it does not establish any new information. Also, the presentation of the text messages would not have affected the decision made regarding the leave to appeal application because it does not add to the information that was before the Tribunal when it made this decision.

⁵ General Division decision para 20

⁶ Hwy 407 bill at GD8-3; Service Inquiry at GD2-21

⁷ General Division decision para 23

e) RCMP Firearms Application

[11] The Claimant presents part of the deceased's application for a firearm, dated 2013, which indicates that he had a common-law partner. This is not a new fact. The document is dated 2013. It was discoverable before the leave to appeal decision was made. In addition, it does not refer to the deceased's relationship status at the time he died. It is not material to the decision made on leave to appeal because it does not point to any error made by the General Division.

f) 2013 Statement of Benefits

[12] The Claimant also presents a copy of a statement of benefits (social assistance) for 2013, which shows the deceased's address in X, Ontario. This document was prepared and discoverable long before the Appeal Division decision was made. Therefore, it is also not a new fact.

g) Audio Recording of General Division Hearing

[13] The Claimant makes a lengthy argument about the audio recording of the General Division hearing, disputing the length of the hearing and alleging that parts of the hearing were not recorded properly. The Minister disputes the allegation that the recording is not complete.

[14] The General Division is not required to record its hearings, although that is the practice. So, I need not decide whether the recording is complete. Any failure to fully record every word said at the hearing is not an error upon which leave to appeal can be granted. Therefore, even if the recording is not complete, this fact is not material to the decision made on leave to appeal. This is not a new fact under the DESD Act.

CONCLUSION

[15] The Claimant has not presented any evidence that meets the legal test for a new fact under the DESD Act. Therefore, the application to rescind or amend the leave to appeal decision is refused.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
SUBMISSIONS BY:	C. D., Applicant Tiffany Glover, Counsel for the Respondent