



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. G. v Minister of Employment and Social Development*, 2019 SST 46

Tribunal File Number: AD-18-746

BETWEEN:

A. G.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: January 21, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] A. G. (Claimant) began to receive a Canada Pension Plan retirement pension in 2006. In 2017, he applied for and began to receive Canada Pension Plan survivor's benefits after his wife passed away. The combined amount of these benefits was less than what he and his wife had received in retirement pensions before she passed away. The Claimant appealed the decision from the Minister of Employment and Social Development (Minister) regarding the total amount payable to the Tribunal. The Tribunal's General Division summarily dismissed his appeal, finding that the appeal had no reasonable chance of success. The Claimant's appeal of the General Division decision is dismissed because the General Division did not make any errors under the *Department of Employment and Social Development Act* (DESD Act).

PRELIMINARY MATTERS

[3] I have decided this appeal on the basis of the written record after considering the following:

- The legal issue to be decided is straightforward;
- The parties' positions on the legal issue are clear;
- The Appeal Division set a pre-hearing teleconference so that the parties could discuss legal and procedural issues. The Claimant did not attend this conference;
- The *Social Security Tribunal Regulations* require that proceedings be concluded as quickly as the considerations of fairness and natural justice permit.¹

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

ISSUE

[4] Did the General Division make an error under the DESD Act in its decision?

ANALYSIS

[5] The DESD Act governs the Tribunal's operation. It provides 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 The Claimant's arguments on appeal must be considered in this context.

[6] The Claimant does not suggest that the Minister made an error in its calculation of the total benefit payable to him. He complains that the amount he now receives as a combined retirement and survivor benefit is approximately 30% less than the total that he and his wife received before her death. Also, he asks for consideration of the facts that his wife's retirement pension was reduced because she did not contribute during child-rearing years and that his pension was reduced because he took time to care for his ailing wife.

[7] These arguments are sympathetic. However, they do not point to any grounds of appeal under the DESD Act. There is no suggestion that the General Division failed to observe a principle of natural justice, erred in law, or based its decision on an erroneous finding of fact. The Tribunal cannot grant an appeal based on sympathetic facts or extenuating circumstances. It must apply the law to the facts before it. The General Division correctly set out the law, particularly with regard to how the Claimant's benefits were calculated.³ I have reviewed the General Division decision and the written record. The General Division did not overlook or misconstrue any important information.

² DESD Act, s 58(1).

³ General Division decision at para 4.

CONCLUSION

[8] The appeal is therefore dismissed.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
SUBMISSIONS:	A. G., the Appellant