



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. A. v Minister of Employment and Social Development*, 2019 SST 215

Tribunal File Number: AD-19-90

BETWEEN:

R. A.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: March 18, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] R. A. (Claimant) applied for an orphan's benefit on behalf of her child, after E. W. (E. W.) passed away. The Minister of Employment and Social Development refused the application because E. W. had not made enough contributions to the Canada Pension Plan for this benefit to be payable. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division summarily dismissed the Claimant's appeal, finding that it had no reasonable chance of success. The Claimant's appeal to the Tribunal's Appeal Division is dismissed because the General Division made no error under the *Department of Employment and Social Development Act* (DESD Act).

PRELIMINARY MATTER

[3] I decided this appeal on the basis of the documents filed with the Tribunal after considering the following:

- The facts are not in dispute
- The parties' positions on the legal issues is clear
- The parties attended a pre-hearing teleconference and agreed that a decision would be made on the basis of the written record

ANALYSIS

[4] The DESD Act governs the Tribunal's operation. It sets out only three 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.¹ Therefore to succeed on appeal the Claimant must present a ground of appeal that falls under the DESD Act.

[5] The Claimant agrees with the facts as set out in the General Division decision – that E. W. had 23 years in his contributory period, that he made contributions in 7 of those years, and that he had to have made contributions in 8 of those years in order for the orphan’s benefit to be payable. The General Division did not base its decision on any erroneous finding of fact, and it did not overlook or misconstrue any important information. The General Division also correctly set out the law regarding entitlement to an orphan’s benefit.

[6] The Claimant asks that the Appeal Division make an exception to the contribution requirements in this case. Unfortunately, the Appeal Division cannot do this. The Tribunal is set up under the DESD Act. As such, it only has the legal authority given to it in the legislation. The Tribunal has no legal authority to make exceptions to the contributory requirements of the *Canada Pension Plan*. So, the appeal must fail.

CONCLUSION

[7] The appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
SUBMISSIONS:	R. A., Appellant Matthew Vens, Counsel for the Respondent

¹ DESD Act s. 58(1)