



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. D. v Minister of Employment and Social Development and A. M.*, 2019 SST 434

Tribunal File Number: AD-19-121

BETWEEN:

C. D.

Appellant

and

Minister of Employment and Social Development

Respondent

and

A. M.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: May 9, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed. The matter is referred back to the General Division for reconsideration by a different General Division member.

OVERVIEW

[2] C. D. (Claimant) was married to L. (Deceased) and they separated in 2011. They did not divorce. The Deceased passed away in 2016. The Claimant applied for a Canada Pension Plan survivor benefit. The Minister of Employment and Social Development refused the application because A. M. (Added Party) had applied for and been granted this benefit on the basis that she was in a common-law relationship with the Deceased.

[3] The Claimant appealed the Minister's decision to this Tribunal. The Tribunal's General Division dismissed the appeal on the basis that the Added Party was the Deceased's common-law partner. Leave to appeal this decision to the Tribunal's Appeal Division was granted because the General Division may have failed to observe a principle of natural justice because the Claimant did not have all of the documents that the Added Party presented to the Tribunal, and the General Division may have erred in law.

PRELIMINARY MATTER

[4] This appeal was decided on the basis of the documents filed with the Tribunal after considering the following:

- a) The parties' provided clear submissions on the issues to be decided;
- b) There are no gaps in the submissions filed; and

- c) The *Social Security Tribunal Regulations* require that proceedings be concluded as informally and quickly as the circumstances and considerations of fairness and natural justice permit.¹

ISSUES

[5] Did the General Division fail to observe a principle of natural justice because the Claimant did not have copies of the Added Party's documents?

[6] Did the General Division make an error in law by failing to apply the correct legal test to determine whether the Added Party was in a common-law relationship with the Deceased?

[7] Did the General Division make any other errors in law?

ANALYSIS

[8] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that can be considered. They are that the General Division failed to observe a principle of natural justice, 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 Therefore, to succeed on appeal the Claimant must prove that the General Division made at least one error under the DESD Act.

Issue 1: Natural justice

[9] One ground of appeal under the DESD Act is that the General Division failed to observe a principle of natural justice. These principles are concerned with ensuring that parties to an appeal have the opportunity to present their legal case to the Tribunal, to know and answer the other parties' legal case, and to have a decision made by an impartial decision maker based on the law and the facts.

[10] The Claimant argues that these principles were breached because she did not have all of the documents that the Added Party filed with the Tribunal. Therefore, she did not know the

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

² DESD Act s. 58(1)

legal case that she had to meet. In its submissions on appeal, the Minister states that it did not provide a copy of the Added Party's application for the survivor benefit and supporting documents to the Tribunal. The Minister requests that the appeal be referred back to the General Division to allow it the opportunity to present a complete file to the Tribunal so that the matter can be adjudicated fairly.³

[11] The Added Party did not address this issue in her submissions.

[12] The General Division decision does not refer to any of the Added Party's evidence except a statutory declaration that states when she began to live with the Deceased.⁴ I am therefore satisfied that the General Division did not have all of the Added Party's evidence before it when it made its decision. The Tribunal sends copies of each party's materials to all other parties. It did not do so in the case because it did not have the documents. Therefore, Claimant also did not have this evidence, and so could not know the legal case that she had to answer. This is a breach of a principle of natural justice. The appeal must be allowed on this basis.

Issue 2: Errors in law

[13] Another ground of appeal under the DESD Act is that the General Division made an error in law. The Claimant argues that the General Division made a number of such errors. In particular, the Claimant says that the General Division erred in law because it failed to apply the proper legal test to decide whether the Added Party was the Deceased's common-law partner. The General Division decision states, "I agree with the Minister that, in consideration of the evidence in the light of the factors enumerated in *Betts v. Shannon*, the Added Party, A. M., met the definition of common-law partner and was therefore the Survivor as defined in subsection 42(1) of the CPP".⁵ However, the decision does not set out what factors are enumerated in the *Betts v. Shannon* court decision, what evidence was presented regarding these factors, or how the factors were applied to the facts in this case. Therefore, the General Division did not apply this legal test to the evidence that was before it. This is an error in law, and the appeal must be allowed on this basis.

³ AD2-1

⁴ General Division decision at para. 12

⁵ General Division decision at para. 12

Other issues

[14] The Claimant also presents a number of other grounds of appeal. However, I need not consider them at this point because I have decided that the appeal must be allowed for the reasons set out above.

REMEDY

[15] The DESD Act⁶ sets out what remedies the Appeal Division can give when an appeal is allowed. This includes referring the appeal back to the General Division for reconsideration. That is the appropriate remedy in this case. The written record is incomplete because much of the Added Party's evidence was not provided to the Tribunal. As a result the Claimant did not know what legal case she had to answer. The General Division also could not weigh the Added Party's evidence to make its decision. It is the General Division's mandate to receive evidence from the parties and weigh it to make a decision.

⁶ s. 59(1)

CONCLUSION

[16] The appeal is allowed.

[17] The matter is referred back to the General Division for reconsideration. To avoid any possibility of an apprehension of bias, it should be reconsidered by a different General Division Member.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
SUBMISSIONS:	C. D., Appellant Stéphanie Pilon, Representative for the Respondent A. M., Added Party