



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. R. v Minister of Employment and Social Development*, 2019 SST 920

Tribunal File Number: AD-19-512

BETWEEN:

L. R.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: August 30, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant, L. R., applied for a Canada Pension Plan (CPP) survivor's pension following the March 2018 death of N. E., a contributor to the plan. In his application, the Applicant claimed that he and N. E. entered into a common-law relationship in 1985 but were no longer living together at the time of her death.

[3] The Respondent, the Minister of Employment and Social Development (Minister) refused the application. The Applicant appealed the Minister's refusal to the Social Security Tribunal's General Division, which held a hearing by videoconference. In a decision dated June 1, 2019, the General Division found that, while the Applicant and N. E. had once been in a common-law relationship, it likely came to an end at some point between 2000 and 2011. The General Division specifically found no evidence to suggest that the Applicant and N. E. had cohabited in a conjugal relationship in the year leading up to the latter's death.

[4] On July 23, 2019, the Applicant requested leave to appeal from the Tribunal's Appeal Division. In his application for leave, the Applicant simply declared his desire to appeal, but he did not list any reasons for wanting to appeal.

[5] On August 14, 2018, the Tribunal asked the Applicant to provide additional reasons for his appeal within a two-week timeline. To date, the Tribunal has yet to receive any response.

[6] Having reviewed the General Division's decision against the underlying record, I have concluded that the Applicant has not advanced any grounds that would have a reasonable chance of success on appeal.

ISSUES

[7] According to section 58(1) of the *Department of Employment and Social Development Act* (DESDA), there are only three grounds of appeal to the Appeal Division: the General Division failed to observe a principle of natural justice; erred 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.

[8] An appeal may be brought only if the Appeal Division first grants leave to appeal.¹ To grant leave to appeal, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.² The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.³

[9] I must determine whether there is an arguable case that the General Division erred according to one or more of the three grounds of appeal set out in section 58(1) of the DESDA.

ANALYSIS

[10] The Applicant's submissions suggest that he is seeking new hearing on the substance of his claim that he was the common-law spouse of the deceased contributor at the time of her death. I cannot fulfill this request, given the constraints of section 58(1) of the DESDA, which only permit the Appeal Division to consider whether the General Division committed an error that falls within one of three precisely defined categories. Those constraints effectively bar the Appeal Division from considering evidence on its merits—either new evidence or evidence that was already assessed by the General Division. An appeal to the Appeal Division is not designed to be a “redo” of the General Division hearing.

[11] In my review of this file, I saw no indication that the General Division ignored, or gave inadequate consideration to, any significant aspect of the Applicant's submissions. While the Applicant may not agree with its conclusions, the General Division was within its authority to

¹ DESDA at ss 56(1) and 58(3).

² Ibid. at s 58(2).

³ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

weigh the available evidence and draw reasonable inferences from it.⁴ The General Division based its decision, in large part, on numerous inconsistencies in the Applicant's various written statements about when he had lived with N. E.. At the hearing, the Applicant testified that he was in a common-law relationship with N. E. until her death, although they lived apart at various times because: (i) her children encountered racism in their community and (ii) they maintained different addresses for income assistance reasons. The General Division found this account unpersuasive, and I see no reason to interfere with its assessment.

[12] In sum, I do not see an arguable case that the General Decision erred when it decided that the Applicant was ineligible for the CPP survivor's benefit.

CONCLUSION

[13] Since the Applicant has not identified any grounds of appeal that would have a reasonable chance of success on appeal, the application for leave to appeal is refused.



Member, Appeal Division

REPRESENTATIVE:	L. R., self-represented
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⁴ *Simpson v Canada (Attorney General)*, 2012 FCA 82.