



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. K. v Minister of Employment and Social Development*, 2019 SST 1284

Tribunal File Number: AD-19-661

BETWEEN:

S. K.

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: October 25, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant, S. K., was married to E. K. for nine years. They divorced in March 2004, and E. K. died in February 2006. The following month, the Applicant made the first of three unsuccessful applications for a Canada Pension Plan (CPP) survivor's pension. The subject of this appeal is the most recent application, which the Applicant submitted in November 2017. In it, the Applicant claimed that she and the late E. K., who was a contributor to the CPP, reconciled after their divorce and were living in a common-law relationship at the time of his death.

[3] The Respondent, the Minister of Employment and Social Development (Minister) refused the application because it saw no evidence that the Applicant had been living continuously with the deceased contributor, in a conjugal relationship for at least a year before his death.

[4] The Applicant appealed the Minister's refusal to the Social Security Tribunal's General Division. It held an in-person hearing and, in a decision dated August 26, 2019, found that the Applicant had failed to prove, on balance, that she and the deceased contributor were common-law partners.

[5] On September 27, 2019, the Applicant requested leave to appeal from the Tribunal's Appeal Division, alleging various errors on the part of the General Division, specifically:

- It ignored the fact that she and the deceased contributor had a son, and they were all living together as a family when E. K. passed away;
- It ignored the fact that the deceased contributor had severe health problems that required family support, particularly in his final year; and
- It did not make allowances for the fact that she is an immigrant whose first language is not English and whose understanding of Canadian law is limited.

The Applicant also enclosed a statement of live birth indicating that D. K. was born to the Applicant in 1995, with the deceased contributor listed as father.

[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 she is seeking new hearing on the substance of her claim that she was the common-law spouse of the deceased contributor at the time of his 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

¹ DESDA at ss 56(1) and 58(3).

² Ibid. at s 58(2).

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

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 weigh the available evidence and draw reasonable inferences from it.⁴ The General Division based its decision, in large part, on the following factors: (i) the Applicant had declared herself divorced and single in her 2006 applications for the CPP death and survivor’s benefits; (ii) the Applicant and the deceased contributor did not have conjugal relations in the last year of his life; and (iii) the Applicant and the deceased contributor maintained separate households at the time of his death. The Applicant submitted documents indicating that she paid for some of the deceased contributor’s expenses in the last two years of his life, but the General Division found that this evidence did not necessarily mean the two were common-law partners. I see no reason to interfere with this assessment.

[12] The Applicant now alleges that the General Division ignored the fact that she and the late E. K. had had a son together. I do not see an arguable case on this point. In paragraph 16 of its decision, the General Division noted that the Applicant “had one child with the deceased contributor,” and D. K. himself was at the hearing to give evidence on behalf of his mother. Of course, the fact that she and the deceased contributor had a child does not necessarily mean that all three were living under the same roof when E. K. passed away in February 2006; as the General Division noted, there was ample evidence to suggest they were not. In its mandate as finder of fact, the General Division was entitled to look through the available evidence and decide for itself what information was worthy of greater or lesser weight. I see no indication that the General Division undertook this responsibility in anything less than good faith.

[13] The same logic applies to the Applicant’s submission that her difficulties with Canadian law and the English language prevented her from establishing her entitlement to the survivor’s

⁴ *Simpson v Canada (Attorney General)*, 2012 FCA 82.

benefit. She made a similar argument at the General Division, but the presiding member did not find it compelling:

The Claimant provided submissions stating that her English was not good, but I do not give any significant weight to this assertion. The Claimant is a registered nurse. I believe that her English skills were good enough for her to understand the forms that she completed. I place significant weight on the applications for the survivor's pension and death benefit that she completed in 2006 because she completed these forms around the time of the deceased contributor's death.⁵

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

[14] 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:	S. K., self-represented
-----------------	-------------------------

⁵ General Division decision, para 25.