



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. Z. v Minister of Employment and Social Development and M. W.*, 2019 SST 1301

Tribunal File Number: AD-19-471

BETWEEN:

C. Z.

Appellant

and

Minister of Employment and Social Development

Respondent

and

M. W.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: November 4, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] C. Z. (Claimant) married R. K. (Contributor) on November 3, 1984. They were divorced on February 15, 2007. The Contributor later married M. W. (Added Party). R. K. passed away on March 30, 2015.

[3] The Claimant and the Added Party both applied for the Canada Pension Plan survivor benefit. The Minister of Employment and Social Development refused the Claimant's application because the Added Party was married to the Contributor at the time of his death and so was entitled to receive this benefit. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division summarily dismissed the Claimant's appeal because it had no reasonable chance of success.

[4] The Claimant appealed the General Division decision to the Tribunal's Appeal Division. This appeal is dismissed because the General Division did not make any errors under the *Department of Employment and Social Development Act* (DESD Act) on which the Appeal Division can intervene, and the Tribunal cannot make its decision based on compassion or extenuating circumstances.

PRELIMINARY MATTERS

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

- a) The legal issue to be decided is straightforward;
- b) The parties filed written submissions that clearly set out their legal positions;
- c) The parties attended a Case Conference, where their legal positions were discussed and the relevant law explained;

- d) No party requested an oral hearing;
- e) The *Social Security Tribunal Regulations* require that proceedings be concluded as quickly and efficiently as the circumstances and considerations of fairness and natural justice permit.¹

[6] The Claimant also stated in the Application to the Appeal Division that she would pursue a claim under the *Canadian Charter of Rights and Freedoms*, although she did not specify what Charter rights she says were infringed or how. After the Case Conference, the Claimant confirmed that she would not pursue this claim.² My decision is made while keeping Charter values in mind.

ISSUES

[7] Did the General Division make an error under the DESD Act such that the Appeal Division should intervene?

[8] Should the Appeal Division allow the appeal based on compassion?

ANALYSIS

Issue 1: The General Division made no errors

[9] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim, but a determination of whether the General Division made an error under the DESD Act. The Act also states that there are only three kinds of errors 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.³ If one of these errors was made, the Appeal Division can intervene.

¹ *Social Security Tribunal Regulations* s. 3

² AD5-1

³ DESD Act s. 58(1)

[10] The principles of natural justice are concerned with ensuring that all parties to an appeal have the opportunity to present their 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. There is no suggestion that the General Division failed to observe these principles.

[11] In addition, the Claimant does not suggest that the General Division based its decision in an erroneous finding of fact. The facts are not in dispute: the Claimant and Contributor were divorced in 2007. In addition, the Contributor had Parkinson's disease before he and the Claimant divorced. As part of the divorce settlement, the Contributor's assets and work pension were placed in trust for the Claimant, but no arrangements were made to place any Canada Pension Plan benefits in trust for the Claimant. The Contributor was married to the Added Party when he passed away.

[12] Finally, in this regard, the General Division made no error in law. The General Division decision correctly states that to qualify for the survivor's pension the Claimant must meet the definition of survivor under the *Canada Pension Plan*: she must have been the Contributor's common-law partner at the time of his death, or if there was no common-law partner, she must have been married to him at that time.⁴ Since the Claimant and Contributor were divorced and there was no suggestion of a subsequent common-law relationship, the Claimant is not a survivor. The General Division decision correctly states this.

[13] Therefore, the appeal fails on the basis that the General Division made an error under the DESD Act.

Issue 2: The Tribunal cannot make decisions based on compassion

[14] The Claimant also requests that the Appeal Division overturn the General Division decision based on compassion. She argues that she and the Contributor divorced because he blamed her for having Parkinson's disease, and for the impact this had on his ability to function. As a result, he was considered a vulnerable person in Manitoba and his assets were protected for the Claimant's benefit when they divorced. The Claimant argues that the Contributor's Canada

⁴ General Division decision at para. 6; *Canada Pension Plan* s.42(1)

Pension Plan benefits should be similarly protected for vulnerable persons, and that this would be in keeping with the values protected by the *Canadian Charter of Rights and Freedoms*.

[15] The Claimant is in very difficult circumstances. However, the Tribunal is created by legislation, the DESD Act. As such, it only has the legal authority given to it under the DESD Act. This does not include any ability to make decisions based on compassion or extenuating circumstances.⁵ The General Division considered this argument.⁶ Its repetition is not a basis upon which the Appeal Division can intervene.

[16] The appeal also fails on this basis.

CONCLUSION

[17] The appeal is dismissed for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
SUBMISSIONS:	C. Z., Appellant Stéphanie Pilon, Representative for the Respondent

⁵ *Wilson v. Canada (Attorney General)*, 2019 FCA 49

⁶ General Division decision at para. 8