



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *Estate of M. B. v Minister of Employment and Social Development*, 2020 SST 32

Tribunal File Number: AD-20-27

BETWEEN:

The Estate of M. B.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: January 16, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division.

OVERVIEW

[2] On October 3, 2019, the General Division determined that the Applicant's notice of constitutional question did not satisfy all the conditions stated in section 20(1)(a) of the *Social Security Tribunal Regulations*. Through an interlocutory decision, the General Division informed the Applicant that the appeal would be heard as an ordinary appeal.

[3] The Applicant filed an application for leave to appeal the General Division's interlocutory decision.

[4] The General Division has not yet made a decision on the issue of whether the Estate of M. B. is entitled to an Old Age Security pension for the period from April 2008 to July 2016 and a Guaranteed Income Supplement benefit for the period from April 2008 to August 2016.

ISSUE

[5] Can the Applicant appeal the General Division's interlocutory decision?

ANALYSIS

[6] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of a General Division decision. These reviewable errors are that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[7] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the claimant does not have to prove their case; instead, they must establish that their appeal has a reasonable chance of success. In other words, they must establish that there is an arguable case that there is a reviewable error based on which the appeal has a reasonable chance of success.

[8] The Tribunal will grant leave to appeal if it is satisfied that at least one of the claimant's stated grounds of appeal has a reasonable chance of success.

[9] This means that the Tribunal must be in a position to determine, in accordance with section 58(1) of the DESD Act, whether there is an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the decision under review.

Can the Applicant appeal the General Division's interlocutory decision?

[10] The Federal Court of Appeal and the Tribunal's Appeal Division have repeatedly affirmed that there should be no immediate appeal of an interlocutory decision (meaning that a decision is not the final one in an appeal), except in exceptional circumstances.¹

[11] In other words, the Appeal Division should not interfere with cases of interlocutory orders of the General Division until after they are completed, except in exceptional circumstances.

[12] The Applicant has not identified any exceptional circumstances in their application for leave to appeal.

[13] If they deem it necessary, the Applicant can always proceed to the Appeal Division when the appeal process at the General Division is complete and the effective remedies at the General Division are exhausted.

¹ *Canada (Border Services Agency) v C.B. Powell Limited*, 2010 FCA 61; *Szciecka v Canada (Minister of Employment and Immigration)*, 1993 CanLII 9425 (FCA); *LR v Minister of Employment and Social Development*, 2019 SST 523; *GC v Canada Employment Insurance Commission*, 2017 CanLII 47497 (SST); *WF v Canada Employment Insurance Commission*, 2016 CanLII 99732 (SST).

[14] The Applicant's appeal of the General Division's interlocutory decision on the constitutional question has no reasonable chance of success.

CONCLUSION

[15] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	Farzad Bigdeli-Azari, Representative for the Applicant
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