



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. W. v Minister of Employment and Social Development*, 2020 SST 164

Tribunal File Number: AD-20-106

BETWEEN:

J. W.

Applicant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: February 27, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Claimant and S. B. began living together 1978. They had four children together before separating in 1993. S. B., who was a contributor to the Canada Pension Plan (CPP), died in 1998.

[3] In October 2017, the Claimant applied for a CPP survivor's pension. The Minister refused the application because it saw no evidence that the Claimant was in a common-law relationship with the deceased contributor at the time of her death.

[4] The Claimant appealed the Minister's refusal to the Social Security Tribunal's General Division. It held a hearing by teleconference and, in a decision dated November 8, 2019, found that the Claimant had failed to prove, on balance, that he was cohabiting with the deceased contributor in a conjugal relationship in the year before her death.

[5] The Claimant is now requesting leave to appeal from the Tribunal's Appeal Division, alleging that the General Division ignored important information:

- He and the deceased contributor had four children together;
- The deceased contributor suffered from mental illness and substance abuse issues;
- He did not have access to the deceased contributor's medical file;
- The deceased contributor was led astray by women in safe houses; and
- It is not difficult to go to a lawyer and sign separation papers.

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

ISSUE

[7] There are only three grounds of appeal to the Appeal Division. An applicant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important error of fact.¹

[8] An appeal may be brought only if the Appeal Division first grants leave to appeal.² Leave to appeal will be granted if the Appeal Division is satisfied that the appeal has a reasonable chance of success.³ This is a fairly easy test to meet, and it means that an applicant must present at least one arguable case.⁴

[9] I have to decide whether any of the Claimant's allegations raise an arguable case.

ANALYSIS

[10] The Claimant'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. The Appeal Division can only consider whether the General Division committed an error that falls within one of three precisely defined categories. That limitation prevents me from considering new evidence or evidence that was already assessed by the General Division. In short, an appeal to the Appeal Division is not meant to be a "redo" of the General Division hearing.

[11] When determining whether a common-law relationship exists, a decision-maker must take into account many factors. In *Hodge v Canada*,⁵ the Supreme Court of Canada said that what matters is the intention of the parties, which can be deduced from their words and actions. Since *Hodge*, a long line of cases has held that there is no exhaustive definition for a common-law relationship and that each case must be decided according to its own particular facts.

¹ The formal wording for these grounds of appeal is found in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

² DESDA, sections 56(1) and 58(3).

³ DESDA, section 58(2).

⁴ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁵ *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65.

[12] When I reviewed this file, I saw no indication that the General Division ignored, or gave inadequate consideration to, any significant aspect of the Claimant's submissions. The Claimant may not agree with the General Division's conclusions, but it was within its authority to weigh the available evidence and draw reasonable inferences from it.⁶ The General Division based its decision on the finding that the Claimant and the deceased contributor lacked most of the elements that are found when two people cohabit in a conjugal relationship, such as a sexual relationship, a common residence, shared of household responsibilities, shared use of assets, and financial interdependence. The Claimant points to the four children that he and the deceased contributor, but the General Division rightly noted that shared responsibility for child-rearing did not, by itself, establish a common-law relationship.

[13] The same logic applies to the Claimant's submission that he would have continued to live with the deceased contributor if not for her mental illness. He made the same argument at the General Division, but the presiding member did not find it persuasive:

While there may be situations where a separation is unintentional because it is caused by the mental or physical health of one of the parties, I cannot say that is what happened here. Susan may have had mental impairments that caused her to make bad choices and act in ways that hurt the Claimant and the children, but there is no evidence she was ever declared incapable of managing herself or her affairs. On the contrary, she was competent enough to obtain and instruct a legal aid lawyer, be given custody of at least two of the children, enter into agreements, and consent to court orders. However much the Claimant wanted to continue the common-law relationship, Susan clearly did not.⁷

[14] In its mandate as finder of fact, the General Division was entitled to assess 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.

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

⁶ *Simpson v Canada (Attorney General)*, 2012 FCA 82.

⁷ General Division decision, paragraph 11.

CONCLUSION

[16] Since the Claimant 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:	J. W., self-represented
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