



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *PD v Minister of Employment and Social Development*, 2020 SST 973

Tribunal File Number: AD-20-818

BETWEEN:

P. D.

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: November 12, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Claimant was in a common-law relationship with W. W. from 1986 to 2009. They reconciled in August 2014 and lived together continuously from October 2014 until W. W.'s death in April 2015. Mr. W. W. was a contributor to the Canada Pension Plan (CPP).

[3] The Claimant applied for a CPP survivor's pension in April 2017. She says that she made the application only after Service Canada officials told her that she was eligible for the pension. Despite that, the Minister refused the application because it saw no evidence that the Claimant was in a common-law relationship with Mr. W. W. at the time of his 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 July 24, 2020, found that the Claimant had failed to prove, on balance, that she was cohabiting with Mr. W. W. in a conjugal relationship in the year before he passed away.

[5] The Claimant is now requesting leave to appeal from the Tribunal's Appeal Division, alleging that the General Division made an important error of fact. She says that, before making her application, she called Service Canada on several occasions and was told each time that she qualified for the additional CPP benefits. She also says that she has yet to receive an answer to this question: Has anyone ever received a CPP survivor's pension even though they were in a common-law relationship for less than a year?

[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 she is seeking new hearing on the substance of her 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 a case called *Hodge*,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 acknowledged that the Claimant and Mr. W. W. had been involved in a common law relationship for 23 years but found that it had ended with "apparent finality" in 2009, with the two dividing their jointly-held assets and moving to different cities.⁷ The General Division heard the Claimant testify that she reconciled with Mr. W. W. in August 2014, shortly before his cancer diagnosis, and that they remained together until his death eight months later. For the General Division, this last piece of evidence was crucial, because the law requires common-law partners to have lived together for at least a year at the time of the contributor's death.

[13] I don't see an arguable case that the General Division erred in its analysis. The *Canada Pension Plan* defines "common-law partner," in relation to a contributor, as "a person who is cohabiting with the contributor in a conjugal relationship at the relevant time, having so cohabited with the contributor for a **continuous period of at least one year** [emphasis added]. For greater certainty, in the case of a contributor's death, the 'relevant time' means the time of the contributor's death."⁸ Since the Claimant plainly testified that she and Mr. W. W. did not reconcile until August 2014, there is no reasonable chance of success for her argument that the General Division erred in finding less than a year of cohabitation.

[14] As the General Division noted, the Claimant may well have been given misleading advice by Service Canada staff, but that makes no difference to the outcome of her claim. Service Canada offers the public guidance about federal government benefits, but such guidance is not infallible, and it should not be considered decisive. Entitlement to benefits is ultimately determined by a careful application of established facts to relevant law. In this case, the General Division, having found that the Claimant and Mr. W. W. did not re-establish a common-law relationship until August 2014, determined that they were not common-law partners, according

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

⁷ General Division decision, paragraph 9.

⁸ Section 2(1) of the *Canada Pension Plan*.

to the statutory definition, as of the contributor's death. I see no reason to second-guess this assessment.

CONCLUSION

[15] 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:	P. D., self-represented
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