Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *BH v Minister of Employment and Social Development*, 2021 SST 85

Tribunal File Number: AD-21-59

BETWEEN:

B. H.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Kate Sellar

Date of Decision: March 3, 2021

Canada

DECISION AND REASONS

DECISION

[1] I refuse the application for leave to appeal. These reasons explain how I reached that conclusion.

OVERVIEW

[2] The Claimant's mother died in December 2019. The Claimant is the executor of her late mother's estate.

[3] The Claimant applied for the Canada Pension Plan (CPP) death benefit in 2020. The Minister denied the application. The Minister explained that it would not pay the death benefit because the Claimant's mother did not make valid contributions to the CPP for the required number of years.

[4] The Claimant appealed to this Tribunal. She had evidence that her mother might have worked and contributed to the CPP in more years than the Minister gave her credit for. At the General Division hearing, the Claimant argued that she should at least receive a pro-rated death benefit based on the years her mother contributed to the CPP. She also argued that the General Division make an exception to the contribution rules in her case. The General Division dismissed the Claimant's appeal.

[5] I must decide whether there is an argument that the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) that would justify giving the Claimant permission (leave) to appeal.

[6] There is no arguable case that the General Division made such an error. As a result, I am refusing the Claimant permission to appeal.

ISSUES

[7] The issues are:

1. Is there an arguable case that the General Division made an error of fact about the

contributions the Claimant's mother made to the CPP?

2. Is there an arguable case that the General Division made an error of fact by ignoring that the Claimant's mother stopped working because of medical conditions?

ANALYSIS

[8] The Appeal Division does not give people a chance to re-argue their case in full at a new hearing. Instead, the Appeal Division reviews the General Division's decision to decide whether it made an error calling for a review. That review is based on the wording of the DESDA, which sets out the grounds of appeal.

[9] The three reasons for an appeal arise when the General Division fails to provide a fair process, makes an error of law, or makes an error of fact.[1] An error of fact has to be material. That means it has to be a mistake that, if fixed, could have led to a different outcome.[2]

[10] At the leave to appeal stage, a claimant must show that the appeal has a reasonable chance of success of satisfying the Appeal Division that the General Division made a reviewable error.[3] To meet this requirement, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.[4]

No arguable case for an error about contributions

[11] There is no arguable case for an error of fact about the contributions to the CPP during the contributory period in this file. Given that the contributions were recorded decades ago, the General Division had to treat the contributions as set out in the Record of Earnings (ROE) as accurate. The General Division could not base its decision about contributions on the Claimant's recollection of her mother working additional years, so ignoring that evidence is not an error of fact.

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[1] DESDA, s 58 (1).
[2] DESDA s 58(1)(c) defines an error of fact occurring when the General Division **based its decision** on a finding that is perverse or capricious or made without regard for the material.
[3] DESDA, s 59 (1).
[4] *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[12] The contributory period is the time during which the Claimant's mother could contribute to the CPP. The contributory period in this case is more than 30 years long. It started in 1966 and ended in December 1998 (the month before her retirement pension started). So the Claimant's mother needed to have valid contributions to the CPP for at least 10 years in order for the Claimant to receive the death benefit.[5] The General Division found that the Claimant's mother had four years of valid contributions to the CPP (namely 1966 to 1969).[6]

[13] The ROE is the document the Minister uses to decide which years the Claimant's mother had earnings high enough to have contributed to the CPP (which is called a valid contribution). The CPP says that the ROE is presumed to be accurate, and cannot be called into question after four years.[7]

[14] The Claimant argues that the General Division made an error of fact by relying only on the contributions listed in the ROE and ignoring her evidence that her mother actually worked until 1972.

[15] This information from the Claimant about when she believes her mother worked does not lead to an arguable case that the General Division made an error of fact. The Claimant was hopeful that her testimony at the General Division would be enough for the General Division to find that her mother made sufficient contributions to the CPP to qualify the Claimant for the death benefit.

[16] However, it is not arguable that that the General Division made an error of fact about the contributions to the CPP in this case. The General Division could not find that the Claimant's mother made contributions to the CPP that were any different from the contributions set out in the ROE.

[17] To the extent that the General Division may have ignored the Claimant's evidence about additional years that the Claimant's mother may have worked, this cannot be an error of fact. The

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[5] *Canada Pension Plan* sections 44(1)(c) and (d), 2(1) and 44(3) explain how contributory periods work and the contribution requirements for the death benefit.
[6] General Division decision, para 11, based on the contribution information in GD2-17.
[7] *Canada Pension Plan* section 96 allows for a process for claimants to ask the Minister to reconsider an entry in the record of earnings, but section 97(1) explains that regardless of that process, the record is presumed to be accurate four years after the Minister makes the entry.

General Division was required to rely on the contributions as they are recorded on the ROE, and could not take into account the Claimant's testimony about other years that her mother may have made contributions. The General Division member did not ignore a fact about when the Claimant's mother might have worked, she was simply following the law about ROEs.

No arguable case for an error about the medical condition

[18] The Claimant has not raised an arguable case that the General Division made an error of fact by ignoring evidence that the Claimant's mother stopped working due to a medical condition. This fact was not material – the medical condition would only change the contributory requirements if the Claimant's mother had collected a CPP disability pension as a result of the medical condition. The Claimant's mother did not receive a CPP disability pension.

[19] I understand the Claimant to argue that the General Division made an error of fact by failing to recognize that the Claimant stopped working due to her medical condition. When the Claimant's mother stopped working, her family (first her husband and then the Claimant) supported her financially. This was a period during which the Claimant's mother had a disability. She did not apply for a CPP disability pension.

[20] However, this fact about why the Claimant's mother stopped working has no impact on whether she meets the contributory requirements. As the General Division explained in its decision, the contributory period is shorter by dropping out periods of time during which the Claimant is determined disabled under the CPP. [8] Although the Claimant's mother may have stopped working due to medical conditions in 1972, she did not ever receive a CPP disability pension. So, she was not determined disabled under the CPP. The contributory period stays the same.

[21] Since the fact the Claimant says the General Division ignored cannot change the outcome of the decision, it cannot have formed the basis for the General Division's decision. There is therefore no arguable case based on this alleged error of fact.

[8] *Canada Pension Plan* section 49(c) allows people to drop years from the contributory period when they are deemed disabled. The General Division explained this at para 12 of its decision.

[22] I reviewed the recording of the hearing and the documents from the General Division file.[9] The General Division did not ignore or misunderstand the facts of the case. The Claimant's testimony about when her mother may have worked was not sufficient to find that she made enough contributions to the CPP in those years to qualify for the death benefit. The earnings would need to be on the ROE, but they were not.

[23] The General Division applied the law to the Claimant's case. The Claimant's mother did not have enough contributions to the CPP to allow the Claimant to collect the death benefit. Even if the Claimant had been successful in showing that her mother worked until 1972, she still would not have had the required 10 years of contributions to qualify for the death benefit.

[24] The law does not allow awarding a partial death benefit based on fewer years of contributions. The law also does not allow the Minister or the Tribunal to exempt the Claimant from the eligibility requirements for the death benefit.

[25] The Claimant does not have an arguable case that the General Division made an error under the DESDA.

CONCLUSION

[26] I refuse the application for leave to appeal.

Kate Sellar
Member, Appeal Division

REPRESENTATIVE:	B. H., self-represented

[9] This kind of review is consistent with what the Federal Court talked about in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.