



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *The estate of WB v Minister of Employment and Social Development*, 2021 SST 223

Tribunal File Number: AD-21-121

BETWEEN:

The estate of W. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: May 31, 2021

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] W. B. (Claimant) passed away in July 2018. He contributed to the Canada Pension Plan through his earnings for many years. However, he was not receiving a retirement pension when he died.

[3] The Claimant's family applied for this pension in January 2020 on behalf of the Claimant. The Minister of Employment and Social Development refused the application. They appealed to the Tribunal. The Tribunal's General Division summarily dismissed the appeal. It decided that the appeal had no reasonable chance of success because the application was made after the time permitted to do so had expired.

[4] The appeal is dismissed. The General Division did not make any error upon which the Appeal Division can intervene.

PRELIMINARY MATTER

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

- a) the facts are not in dispute;
- b) the written record is complete. There are no gaps in the information provided by the parties;
- c) neither party requested an oral hearing;
- d) the Tribunal has the legal authority to decide questions of law and fact necessary to dispose of an appeal;¹ and

¹ Section 64 of the *Department of Employment and Social Development Act*

- e) the Tribunal must conclude appeals as quickly as the considerations of fairness and natural justice permit.²

ISSUE

[6] Did the General Division fail to provide a fair process?

ANALYSIS

[7] An appeal to the Tribunal's Appeal Division is not a re-hearing of the original claim. Instead, the Appeal Division can only decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or
- d) based its decision on an important factual error.³

The General Division provided a fair process

[8] The Tribunal must provide parties with a fair process (natural justice). This means that each party must have the opportunity to present their legal case to the Tribunal, to know and answer the other party's legal case and to have a decision made by an impartial decision maker based on the law and the facts.

[9] The Claimant says that the process was unfair because she did not know about the time limit within which an application for retirement benefits must be made after someone dies. She argues that the process should be more transparent. This may be so.

[10] However, this argument does not point to any error made by the General Division. It does not suggest that the Claimant did not have the opportunity to present his case to the Tribunal, know or respond to the Minister's legal case, or that the decision was not based on the law or the facts. In fact, the General Division decision states that the Claimant had an opportunity to present

² Section 3(1) of the *Social Security Tribunal Regulations*

³ This paraphrases the grounds of appeal set out in s. 58(1) of the *Department of Employment and Social Development Act*

arguments before it made its decision.⁴ The Claimant was provided with all documents related to the appeal so knew the Minister's legal case and could respond to it. There is no suggestion that the General Division was biased.

Other issues

[11] The General Division decision sets out the relevant law – that an application for the retirement benefit must be made within 12 months of a claimant's death.⁵ It also states that the Tribunal has no legal authority to make exceptions to this.⁶ The General Division applied the law to the facts before it. It made no error in law.

[12] The facts in this appeal are not in dispute. The General Division did not overlook or misconstrue any important information.

CONCLUSION

[13] I am sympathetic to the Claimant's situation. However, the General Division did not make any error upon which the Appeal Division can intervene.

[14] The appeal is therefore dismissed.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	A.B., Representative for the Appellant Ian McRobbie, Counsel for the Respondent

⁴ See General Division decision at para. 6

⁵ General Division decision at para. 7

⁶ General Division decision at para. 9

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