



Citation: *The Estate of KG v Minister of Employment and Social Development*, 2021 SST 763

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: The Estate of K. G.
Representative: M. G.

Respondent: Minister of Employment and Social Development
Representative: Joshua Toews (counsel)

Decision under appeal: General Division decision dated May 29, 2021
(GP-20-653)

Tribunal member: Janet Lew

Type of hearing: On the Record
Decision date: December 11, 2021
File number: AD-21-272

Decision

[1] The appeal is dismissed. The General Division did not make any jurisdictional, procedural, legal, or factual errors. The Claimant is not entitled to a death benefit.

Overview

[2] The Appellant, the Estate of K. G. (Claimant), is appealing the General Division decision. The General Division determined that the deceased, K. G., had not made any contributions to the Canada Pension Plan. Therefore, a Canada Pension Plan death benefit was not payable to the Claimant. The General Division found that the Claimant did not have a reasonable chance of success. It summarily dismissed the Claimant's appeal.

[3] The Claimant argues that the General Division made jurisdictional, procedural, legal, and factual errors. The Claimant also argues that the evidence showed that the deceased made sufficient contributions to the Canada Pension Plan. The Claimant argues that the Estate is entitled to a death benefit.

Issues

[4] The issues in this appeal are as follows:

: Deep issue(s) in question format: the precise questions you must answer to come to a decision in this case. List in logical sequence that will make sense to the reader.

- a) Did the General Division make any jurisdictional errors?
- b) Did the General Division make any procedural errors or fail to ensure that the process was fair?
- c) Did the General Division make any legal errors about the eligibility requirements for a death benefit?
- d) Did the General Division ignore or overlook any of the evidence?

Analysis

[5] The Appeal Division may intervene in General Division decisions if there are jurisdictional, procedural, legal, or certain types of factual errors.¹ The Claimant argues that the General Division made jurisdictional, procedural, legal, and factual errors.

Did the General Division make any jurisdictional errors?

[6] The Claimant argues that the General Division made jurisdictional errors. I see from a letter dated June 10, 2021, that G., the deceased's widow, is asking for a "widow pension and other applicable benefits."² I understand, in other words, that she is asking for a Canada Pension Plan survivor's pension. I understand also that the widow is suggesting that the General Division failed to consider her entitlement to a survivor's pension.

[7] I see no merit to this argument or suggestion. This issue was not properly before the General Division. Insofar as I can determine from the record, the widow did not apply for a survivor's pension. The only application was for a death benefit.

[8] The Minister's initial and reconsideration decisions are about the Claimant's application for a death benefit. The Claimant appealed the Minister's reconsideration decision to the General Division. Hence, the General Division's could only consider the issue that was the subject of the Minister's reconsideration decision. The General Division could not consider something that the Minister had not decided.

Did the General Division make any procedural errors or fail to ensure that the process was fair?

[9] The General Division provided the Claimant with the opportunity to file any evidence and to make submissions. The Claimant had already filed submissions and

¹ See section 58(1) of the *Department of Employment and Social Development Act*.

² See Claimant's letter dated June 10, 2021, at AD1-1.

supporting documents on July 20, 2020,³ October 8, 2020,⁴ January 25, 2021,⁵ and February 17, 2021.⁶

[10] The Minister filed submissions on February 8, 2021. The Social Security Tribunal emailed the Claimant a copy of the Minister's letter.

[11] A General Division member then notified the Claimant that she was considering summarily dismissing the appeal. The member gave the Claimant to May 10, 2021, to file any explanation or relevant documents, to show that the appeal had a reasonable chance of success. If the Claimant could show that the appeal had a reasonable chance of success, then the member would not summarily dismiss the appeal. The Claimant did not respond by this date. So, the General Division summarily dismissed the Claimant's appeal on May 29, 2021.

[12] I find that the General Division member gave adequate notice to the Claimant to object to the General Division's intention to summarily dismiss the appeal. I also find that the General Division gave both parties a full and fair opportunity to present their side of the story. I am not satisfied that there were any procedural irregularities or errors or that the Claimant was deprived of a fair process.

Did the General Division make any legal errors about the eligibility requirements for a death benefit?

[13] The Claimant argues that the General Division made legal errors.

- Social Security Agreements

[14] The Claimant argues that, under agreements between Canada and the Czech Republic and between Canada and the United States, the widow is entitled to a widow's pension "and other applicable benefits." From this, it seems that the Claimant is also

³ See Claimant's letter dated June 9, 2020, with supporting documents, at GD3 (6 pages).

⁴ See Claimant's letter dated September 29, 2020, with supporting documents, at GD4 (5 pages).

⁵ See Claimant's letter dated January 7, 2021, with supporting documents, at GD5 (4 pages).

⁶ See Claimant's letter dated January 30, 2021 at GD7 (1 pages).

arguing that the Estate is entitled to a Canada Pension Plan death benefit under these social security agreements.

[15] The Claimant raised this argument before the General Division.⁷ The General Division did not address the Claimant's arguments that the Estate was entitled to benefits under social security agreements between Canada and the Czech Republic and between Canada and the United States. The General Division should have addressed the Claimant's arguments.

[16] However, the Claimant has not referred me to any specific provisions of either agreement. The mere existence of such agreements does not automatically confer any benefits on a claimant.

[17] Article 13 of the Agreement on Social Security Between Canada and the Czech Republic indicates that there is no right to a benefit:

Notwithstanding any other provision of this Agreement, if the total duration of the creditable periods accumulated by a person under the legislation of a Party is less than one year and if, taking into account only those periods, no right to a benefit exists under the legislation of that Party, the competent institution of that Party shall not be required to pay a benefit to that person in respect of those periods by virtue of this Agreement.⁸

[18] Similar provisions exist under the Agreement between the Government of the United States of America and the Government of Canada with respect to Social Security. Chapter 2, Article VIII, section 1(a), states:

1.(a) If a person is not entitled to the payment of a benefit because he or she has not accumulated sufficient periods of residence under the Old Age Security Act, or periods of coverage under the Canada Pension Plan, the entitlement of that person to the payment of that benefit shall, subject to sub-paragraph (1)(b), be determined by totalizing these periods and those specified in paragraph (2), provided that the periods do not overlap.

...

⁷ See Claimant's letter dated September 29, 2020, at GD4-2.

⁸ See Article 13 of the Agreement on Social Security Between Canada and the Czech Republic, E103876 – CTS 2003 No. 3.

2.(b) For purposes of determining entitlement to the payment of a benefit under the *Canada Pension Plan*, a calendar year including at least one quarter of coverage credited under United States laws shall be considered as a year of coverage credited under the *Canada Pension Plan*.

[19] The Claimant argues that its entitlement to a death benefit arises out of the fact that the widow is the survivor of a Canadian citizen. The fact that the deceased was a Canadian citizen has no bearing on the Claimant's entitlement to the death benefit.

[20] Both Agreements clearly require a period of contributions or coverage. There is no evidence that the deceased made any contributions at all, either to the Canada Pension Plan or under United States laws. So, the Claimant cannot avail itself of the social security agreements.

[21] The General Division should have addressed the Claimant's argument that it was entitled to the death benefit under social security agreements involving Canada, the Czech Republic and the United States. However, it would not have changed the outcome.

- **The Canada Pension Plan**

[22] The Claimant applied for a Canada Pension Plan death benefit.⁹ The Minister denied the Claimant's application initially and on reconsideration. The Minister denied the application because it found that the deceased had not contributed to the Canada Pension Plan. The Claimant appealed the Minister's reconsideration decision to the General Division.

[23] The General Division examined whether the Claimant was eligible for the death benefit. The General Division noted paragraph 44(1)(c) and subsection 44(3) of the *Canada Pension Plan*.

[24] The General Division found that paragraph 44(1)(c) required a deceased contributor to have made contributions to the Canada Pension Plan for not less than the

⁹ See Claimant's Application for a Canada Pension Plan Death Benefit, at GD2-9.

minimum qualifying period, to qualify for a death benefit. If a deceased contributor had not made sufficient contributions, then they would not be entitled to a death benefit.

[25] The General Division found that under subsection 44(3) of the *Canada Pension Plan*, a contributor had made contributions for not less than the minimum qualifying period only if they had made valid contributions for:

- (a) At least one third of the total number of years included either wholly or partly within their contributory period; or
- (b) At least ten years.

[26] The General Division properly cited the applicable sections of the *Canada Pension Plan*.

[27] The General Division then properly applied the applicable sections of the *Canada Pension Plan* to the facts. The General Division found that the deceased had not made any contributions to the Canada Pension Plan.

Did the General Division ignore or overlook any of the evidence?

[28] The Claimant argues that the General Division made important factual errors when it decided that the Claimant was not eligible for a death benefit.

[29] The Claimant says that the General Division either ignored or overlooked evidence. The Claimant says this includes evidence that shows that the deceased contributed to the Canada Pension Plan.

[30] The Claimant argues the following:

- The deceased was a Canadian citizen who lived and worked in Canada. He had a social insurance number. He paid Canadian taxes.
- The deceased “contributed to the pension plan for over 10 years.”¹⁰

¹⁰ See Claimant’s letter dated June 27, 2021, at AD1B- 1.

- The deceased received “monthly pension payments by electronic deposits from Canada for more than twenty years.”¹¹ This included a final payment in August 2019. The Claimant provided bank statements that confirmed electronic deposits.
- There are social security agreements between Canada and the Czech Republic and between Canada and the United States. The Claimant argues that the widow is entitled to a pension under these social security agreements because she married the deceased in January 1981 and lived with him from April 1981 to August 2019. She is also a citizen of both the Czech Republic and the U.S.
- The Minister did not require any additional documents from the Claimant.

[31] The Minister argues that the Appeal Division should not consider the bank statements, as they represent “new evidence” that the General Division did not have before it. I agree. Generally, the Appeal Division does not consider new evidence. There is no basis upon which I can consider this new evidence.

[32] Even so, had I been able to consider the bank statements, I would have found them too vague and inconclusive. There is a description for each deposit. But, as the Minister argues, the description “Electronic Dep Gvt. Canada Pension Pen” could just as well have described deposits of an old age security pension. They do not prove that the deceased contributed to the Canada Pension Plan.

[33] Most of this evidence is irrelevant to the question of the Claimant’s eligibility for the death benefit. So, the General Division did not have to consider this evidence. I find that the General Division did not make a factual error by either ignoring or overlooking evidence.

[34] The only evidence that the General Division had to consider was whether and how many years of contributions the deceased made to the Canada Pension Plan. The Claimant’s assertions that the deceased contributed to the Canada Pension Plan was

¹¹ See Claimant’s letter dated June 10, 2021, at AD1-1.

insufficient proof. There had to be some supporting records that the deceased contributed to the Canada Pension Plan.

[35] Records at the General Division included the following:

- Copies of 2016, 2018, and 2019 Canada Revenue Agency Statement of Old Age Security Pension Paid tax slips.¹² The Claimant relied on these statements. However, they do not show that the deceased contributed to the Canada Pension Plan.

Notably, the Claimant did not produce any Canada Revenue Agency Statement of Canada Pension Plan tax slips. If the deceased had received Canada Pension Plan tax slips for say, retirement benefits, it could have established that he had made some contributions to the Canada Pension Plan. However, it would not have established whether he had made sufficient contributions.

- Contributions history¹³ shows that the deceased did not contribute to the Canada Pension Plan.

[36] Based on the evidence that was before the General Division, I find that the only conclusion that it could have drawn was that the deceased had not made any contributions to the Canada Pension Plan. Accordingly, the Claimant was not entitled to a death benefit because the deceased did not meet the eligibility requirements under paragraph 44(1)(c) of the *Canada Pension Plan*.

[37] The Claimant did not have a reasonable chance of success based on the evidence before the General Division. Therefore, the General Division was entitled to summarily dismiss the appeal.

¹² See Statement of Old Age Security Pension Paid for 2016, 2018, and 2019, at GD3-2 and at GD5-2 to GD5-4.

¹³ See Contributions, at GD2-18.

Conclusion

[38] The General Division did not make any jurisdictional, procedural, legal, or factual errors. The General Division also appropriately summarily dismissed the appeal. I am dismissing the appeal of the General Division decision. The Claimant is not entitled to a Canada Pension Plan death benefit.

Janet Lew
Member, Appeal Division