



Citation: *The Estate of BP v Minister of Employment and Social Development*, 2021 SST 790

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

<b>Applicant:</b>	The Estate of B. P.
<b>Respondent:</b>	Minister of Employment and Social Development
<hr/>	
<b>Decision under appeal:</b>	General Division decision dated October 22, 2021 (GP-21-1111)
<hr/>	
<b>Tribunal member:</b>	Neil Nawaz
<b>Decision date:</b>	December 24, 2021
<b>File number:</b>	AD-21-425

## Decision

[1] Leave to appeal is refused. This appeal won't be going forward.

## Overview

[2] B. P. was a contributor to the Canada Pension Plan (CPP). She passed away in September 2019. The following month, her estate (the Claimant) applied for the CPP death benefit.

[3] The Minister refused the application because its records showed that the late B. P. had made valid contributions in only eight years—short of the minimum 10 years required by the law.<sup>1</sup>

[4] In December 2020, the Social Security Tribunal's General Division summarily dismissed the estate's appeal. The Tribunal's Appeal Division later overturned that decision because it found that the General Division had not given the Claimant enough time to prove that B. P. had more years of valid contributions.

[5] The Appeal Division returned the matter to the General Division for a rehearing and ordered it to give the Claimant at least four months to make additional submissions. After waiting for the specified period, the General Division held a hearing by teleconference and dismissed the Claimant's appeal for a second time. Although the General Division recognized valid contributions for one additional year,<sup>2</sup> it found that that was still not enough to establish eligibility.

[6] The Claimant has now returned to the Appeal Division, asking for leave to appeal the General Division's second decision. The Claimant alleges that the General Division made an error when it found that B. P.' \$4.53 in CPP contributions for the year 1974 were returned to her. In fact, says the Claimant, the refund for that year was zero. The Claimant adds that the General Division excessively focused on B. P.' earnings, rather than the contributions that she actually made to the CPP.

---

<sup>1</sup> An initial record of earnings (GD2-20) showed that B. P. had unadjusted pensionable earnings above the maximum pensionable earnings threshold for the years 1975-80 (inclusive), 1982, and 1985.

<sup>2</sup> An updated record of earnings (IS1-2) showed previously unreported pensionable earnings for 1983.

[7] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Claimant's appeal does not have a reasonable chance of success.

## Issue

[8] There are three grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.<sup>3</sup>

[9] An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.<sup>4</sup> At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.<sup>5</sup> This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.<sup>6</sup>

[10] I had to decide whether the Claimant raised an arguable case.

## Analysis

[11] The Claimant alleges that the General Division made an important factual error when it found that B. P. made no CPP contributions in 1974.

[12] I don't see an argument here.

[13] In its decision, the General Division wrote:

The Minister went on to submit that the \$4.53 cents of CPP contributions reflected on the deceased contributor's Record of Earnings for the year 1974 were returned to her. **That refund has been confirmed**, but there is no way to access to any additional records from that year [emphasis added].<sup>7</sup>

---

<sup>3</sup> *Department of Employment and Social Development Act (DESDA)*, section 58(1).

<sup>4</sup> DESDA, sections 56(1) and 58(3).

<sup>5</sup> DESDA, section 58(2).

<sup>6</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>7</sup> General Division decision dated October 22, 2021, paragraph 12.

[14] To support its statement that her 1974 contributions had been “returned,” the General Division cited B. P.’ updated record of earnings.<sup>8</sup> However, when I examine that record of earnings, I don’t see anything to confirm that the \$4.53 in question was returned: in fact, no refund is listed for 1974.

[15] So, it appears the Claimant is right when it says that the General Division made a factual error. However, that does not mean he has an arguable case. Why not? Because the factual error did not matter. The General Division incorrectly found that B. P. made no contributions in 1974, but that error made no difference to the outcome of the Claimant’s case because B. P. never had enough earnings in that year. For 1974 to have counted among the minimum 10 years needed to qualify her estate for the death benefit, B. P. had to do more than just make contributions to the CPP; she also had to earn above a threshold amount. In 1974, that amount was \$700;<sup>9</sup> her record of earnings shows that she earned only \$384 in that year.

[16] In short, the General Division made a mistake, but that mistake did not affect the result of its decision. Although it was wrong about the refund, the General Division was right to conclude that B. P. fell short of the minimum threshold of 10 years of valid CPP contributions.

## **Conclusion**

[17] The Claimant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, the application for leave to appeal is refused.



---

Member, Appeal Division

---

<sup>8</sup> See updated record of earnings, generated August 2021, IS2-2.

<sup>9</sup> Canada Revenue Agency’s website: [CPP contribution rates, maximums and exemptions - Canada.ca](https://www.cra.gc.ca/contributions/contributions-rates-maximums-exemptions).