Citation: *AM v Minister of Employment and Social Development and SR*, 2021 SST 795

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	A. M.
Respondent:	Minister of Employment and Social Development
Added Party:	S. R.

Decision under appeal:	General Division decision dated December 3, 2021 (GP-20-1242)

Tribunal member:	Neil Nawaz
Decision date:	December 29, 2021
File number:	AD-21-438

Decision

[1] Leave, or permission, to appeal is refused. This appeal will not be going forward.

Overview

[2] The Applicant and the Added Party were married in May 1974. They separated in February 1997 and divorced in February 2002.

[3] In July 2019, the Added Party applied for a CPP (Canada Pension Plan) credit split and, in support of her application, provided proof of her divorce. The Minister proceeded to redistribute the Applicant's CPP credits to the Added Party. In January 2020, the Added Party had second thoughts and asked to withdraw her application, but the Minister refused to comply with her request. The Minister said that it has no choice but to divide CPP credits between former spouses when it receives information that they have been divorced.

[4] The Applicant appealed the Minister's refusal to the General Division of the Social Security Tribunal. He said that he depended on his pension to support his family. He argued that the credit split should be reversed because it was prohibited by the terms of a separation agreement that he and his former wife signed in August 2001.

[5] The General Division held a hearing by teleconference and dismissed the appeal. It agreed with the Minister that a CPP credit split is mandatory for spouses divorced after January 1, 1987. It said that, even though the Added Party wanted her application withdrawn, the Minister was required to perform the credit split upon receiving sufficient proof that a divorce had taken place. The parties could not waive the CPP credit split, since the parties had signed their separation agreement in Ontario, and that province had not enacted legislation that would have allowed them to do so.

[6] The Applicant is now asking for permission to appeal the General Division's decision. He alleges that the General Division made the following errors:

- It displayed bias by supporting only the Minister and by not listening to either the Applicant or the Added Party;

- It made an error of jurisdiction by declaring that it lacked the power to order the Minister to change its position;
- It made an error of law by forcing people to do something they had agreed not to do; and
- It failed to consider the Applicant's illness and his consequent inability to work for the past two years.

[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 Applicant's appeal does not have a reasonable chance of success.

Issue

[8] There are four grounds of appeal to the Appeal Division. An applicant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.[1]

[9] An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.[2] At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.[3] This is a fairly easy test to meet, and it means that a Applicant must present at least one arguable case.[4]

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

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[1] *Department of Employment and Social Development Act* (DESDA), section 58(1).
[2] DESDA, sections 56(1) and 58(3).
[3] DESDA, section 58(2).
[4] *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

Analysis

There is no arguable case that the General Division was biased

[11] The Applicant alleges that the General Division ignored his submissions and systematically favoured the Minister's. I don't see an arguable case on his point.

[12] The threshold for a finding of bias is high, and the burden of establishing bias lies with the party alleging its existence. Bias suggests a state of mind that is closed on particular issues and is somehow predisposed to a particular result. The Supreme Court of Canada has stated the test for bias as follows: "What would an informed person, viewing the matter realistically and practically and having thought the matter through conclude?"[5] A real likelihood of bias must be demonstrated, with mere suspicion not being enough.

[13] An unfavourable outcome is not, by itself, evidence of bias. The Applicant alleges that the General Division had a closed mind but, apart from disagreeing with its findings, he has not offered any concrete examples of how it treated him and his former wife unfairly. I have reviewed the case file and listened to a recording of the hearing, and I've seen and heard nothing to suggest impartiality. The General Division gave the parties adequate notice of the hearing and allowed them a full opportunity to make their respective cases. In the end, the General Division did not side with the Applicant, but that does not mean it was predisposed against him.

There is no arguable case that the General Division made an error of jurisdiction

[14] The Applicant argues that the General Division made an error by refusing to exercise its power to reverse the credit split. Again, I don't see an arguable case here.

[15] This matter came into the General Division's hands when the Applicant appealed the Minister's refusal to reverse the credit split. When the General Division decided that it had no choice but to maintain that refusal, it was exercising its statutory authority to

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[5] See *Committee for Justice and Liberty v. Canada (National Energy Board)* 1976 2 (SCC), 1978 1 SCR.

affirm, vary, or overturn a decision of the Minister.[6] In this case, the General Division exercised its authority, but it did so in a way that went against his interests. As mentioned earlier, the mere fact that a party disagrees with a decision of the General Division is not reason to overturn that decision.

There is no arguable case that the General Division made an error of law

[16] The Applicant's main argument is that the General Division erred in law by disregarding the 2001 separation agreement between himself and the Added Party. He maintains that the separation agreement prevents the Minister from splitting his CPP credits.

[17] I don't see a case for this argument. In my view, the General Division correctly interpreted the law around CPP credit splitting.

[18] In its decision, the General Division concluded that, if a divorce has been granted and one of the former spouses applies for a credit split, then a credit split is mandatory. Under the *Canada Pension Plan*, the Minister is not bound by a spousal agreement or court order.[7] The split must be made, whether or not the former spouses explicitly opt out of it. An exception may occur only if an agreement not to split CPP credits is expressly permitted in the province that governs the agreement.[8]

[19] In this case, the Applicant and Added Party's separation agreement was governed by the laws of Ontario. Given this, the General Division was within its authority to accept the Minister's submission that there was nothing in Ontario law that allowed the Applicant and his former spouse to opt out of the mandatory credit split. Based on the set of facts before it, the General Division was left with no option but to dismiss the Applicant's appeal.

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[6] DESDA, section 54(1).
[7] *Canada Pension Plan*, section 55.2(2).
[8] *Canada Pension Plan*, section 55.2(3).

There is no arguable case that the General Division failed to consider the Applicant's illness

[20] The Applicant says that the credit split has damaged his finances at a time when he can no longer work. He clearly believes that the General Division has treated him unfairly.

[21] Unfortunately, I have no remedy to offer him. Both the General Division and the Appeal Division must follow the letter of the law, and neither have any discretion to simply order a reversal of a credit split once one has been carried out. Support for this position may be found in many precedent-setting cases, which have decided that an administrative tribunal's powers are limited to those found in its enabling statute.[9]

Conclusion

[22] The Applicant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, permission to appeal is refused.

Member, Appeal Division

[9] This means that the General Division and the Appeal Division do not have any powers except those that are explicitly set out in the DESDA. See *Canada (Minister of Human Resources Development) v. Tucker,* 2003 FCA 278.