



Citation: *AN v Minister of Employment and Social Development*, 2022 SST 18

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

# **Leave to Appeal Decision**

**Applicant:** A. N.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** General Division decision dated November 3, 2021  
(GP-21-390)

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**Tribunal member:** Kate Sellar

**Decision date:** January 11, 2022

**File number:** AD-21-424

## Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed. These reasons explain why.

## Overview

[2] A. N. (Claimant) started receiving a Canada Pension Plan (CPP) disability pension in December 1998. She turned 65 years old in February 2019. The Minister of Employment and Social Development Canada (Minister) converted the Claimant's disability pension to a retirement pension the month after her 65 birthday.<sup>1</sup>

[3] The Claimant appealed to this Tribunal. The Claimant says that the Minister did not use all of her earnings to calculate her monthly CPP retirement pension.

[4] The Minister says that it calculated the Claimant's pension according to the CPP. The Minister has no power to increase the pension payments any more than what the CPP allows.

[5] The General Division decided that the Claimant did not prove that she had any additional pensionable earnings that were missing from the Minister's calculation. The General Division dismissed the Claimant's appeal.

[6] The Claimant asks for leave to appeal the General Division's decision.

[7] I must decide whether it is arguable that the General Division made an error that would justify granting the Claimant leave to appeal.

[8] The Claimant has not raised an arguable case that the General Division made an error. Even if the General Division made an error about what its powers are (an error of jurisdiction), I cannot justify granting the Claimant leave to appeal. There is no path here to eligibility for a different amount of retirement pension than what she already receives. I am refusing leave to appeal. The appeal will not go ahead.

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<sup>1</sup> Sections 44(1)(a) and section 70(1) of the CPP explain how this works.

## Issue

[9] The issue in this case is as follows:

- Has the Claimant raised an arguable case that the General Division made an error by dismissing her appeal?

## Analysis

[10] First, I will describe my role at the Appeal Division in terms of reviewing General Division decisions. Next, I will explain how I decided that the Claimant did not raise an arguable case for an error by the General Division. Finally, I will explain how the General Division's reasons do not amount to an error of jurisdiction on which I could grant leave to appeal.

### Reviewing General Division Decisions

[11] The Appeal Division does not provide an opportunity for the parties to re-argue their case in full. Instead, I reviewed Claimant's arguments and the General Division's decision to decide whether the General Division may have made any errors.

[12] That review is based on the wording of the *Department of Employment and Social Development Act (Act)*, which sets out the "grounds of appeal." The grounds of appeal are the reasons for the appeal. To grant leave to appeal, I must find that it is arguable that the General Division made at least one of the following errors:

- It acted unfairly.
- It failed to decide an issue that it should have, or decided an issue that it should not have.
- It based its decision on an important error regarding the facts in the file.
- It misinterpreted or misapplied the law.<sup>2</sup>

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<sup>2</sup> See section 58(1) of the Act.

[13] At the leave to appeal stage, a claimant must show that the appeal has a reasonable chance of success.<sup>3</sup> To do this, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.<sup>4</sup>

### **No arguable case from Claimant that the General Division made an error of law**

[14] The Claimant has not raised an arguable case that the General Division made an error.

[15] The General Division reviewed the history of the letters that went back and forth between the Claimant and the Minister about her retirement pension. On March 27, 2019, the Minister provided the Claimant with a letter that explained how it calculated the Claimant's retirement pension.<sup>5</sup> The letter:

- Explains that the retirement pension at age 65 is 25% of your average monthly pensionable earnings during the contributory period.<sup>6</sup>
- Explains that pensionable earnings are the amount of earnings above the year's basic exemption and below the maximum amount that you can contribute to the CPP.
- Provides a chart of the Claimant's pensionable earnings.
- Describes how many months were in the Claimant's contributory period.<sup>7</sup>

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<sup>3</sup> See section 58(2) of the Act.

<sup>4</sup> The Federal Court of Appeal explained this idea in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>5</sup> See GD2-404 to 408.

<sup>6</sup> See section 46(1) of the CPP.

<sup>7</sup> The letter describes how many months the Minister dropped out of the contributory period as well. For example, the Minister dropped out the months that the Claimant received the disability pension, and the months she was at home to care for a child under seven years old. Section 49 of the CPP explains when contributory periods start and end.

- Provides the benefit calculation using the Claimant's total adjusted pensionable earnings and the number of months in the contributory period (including the adjustment factors).<sup>8</sup>

[16] The Claimant wrote to the Minister several times after she received this letter, saying that she believed her pension amount was not right.

[17] The Minister's reconsideration decision dated March 19, 2020 responds to the Claimant's concerns.<sup>9</sup> For example, it explains that work before the age of 18 or work completed outside of Canada does not count as pensionable earnings.

[18] The General Division decided that although the Claimant rejected the retirement pension calculation, she did not point to any pensionable earnings that the Minister ignored in calculating the CPP retirement pension, or with the calculation itself.<sup>10</sup>

[19] The Claimant argues that the General Division made an error of law. She states that:

- an alias claimed her CPP disability pension;
- her pensionable earnings started in 1974 not 1975;<sup>11</sup>
- the contributions from 1984 to 1988 are wrong;<sup>12</sup>
- she has and continues to have a disability;
- someone tampered with her files at the Tribunal because her appeal was already allowed;<sup>13</sup> and

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<sup>8</sup> Section 50 of the CPP defines pensionable earnings.

<sup>9</sup> See GD2-82 to 83.

<sup>10</sup> See paragraph

<sup>11</sup> See AD1B-6.

<sup>12</sup> See AD1C-1.

<sup>13</sup> See AD1E-1.

- the pensionable earnings are incorrect because they don't account for time in an army.<sup>14</sup>

[20] In my view, the Claimant has not raised any case that the General Division may have made an error about her retirement pension.

[21] The fact that the Claimant had a severe and prolonged disability and therefore received the disability pension is not in dispute. The pension only changed to a retirement pension because of the Claimant's age.

[22] There was not sufficient evidence in the appeal at the General Division that would justify finding any problem with the Claimant's pensionable earnings as they were set out by the Minister. The Claimant was challenging the amount of her pensionable earnings, but she did not provide evidence to show how the Minister got those earnings wrong. The General Division concluded that the calculation was correct and the Claimant provided no other argument about how that calculation might be incorrect.

[23] After reviewing the documents the General Division had, I conclude that the General Division did not misunderstand or ignore the evidence.<sup>15</sup> It applied the evidence available and decided that Claimant was not able to show that the Minister got the retirement pension calculation wrong.

[24] A final note. I am satisfied that the General Division focused on the correct issues in this case.

[25] To calculate a retirement pension, the Minister relies on the pensionable earnings posted on a record of earnings document. According to the CPP, after four years, entries on the record of earnings are presumed to be accurate for calculating the retirement pension.<sup>16</sup> If a Claimant disagrees about the accuracy of the pensionable

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<sup>14</sup> See AD1-4.

<sup>15</sup> This review is consistent with what the Federal Court discusses in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

<sup>16</sup> See section 97(1) of the CPP.

employment the record of earnings within the four-year period, the Canada Review Agency addresses that problem.<sup>17</sup>

[26] The General Division asked the Claimant to provide evidence of the error in the calculation of the retirement pension and the Claimant was not able to provide evidence that amounted to an error.

[27] But the General Division also asked the Claimant to provide documents to show that she had additional pensionable earnings that should be attributed to her record of earnings. The Claimant was not able to provide any such documents.

[28] If the Claimant had some evidence about the accuracy of the entries on the record of earnings within four years, she would have needed to raise them with CRA. If they were older than four years, they are presumed accurate (by the Minister and by the General Division).

[29] I understand that the General Division attempted to collect the information from the Claimant about other possible earnings only in order to better understand and grapple with the nature of the Claimant's arguments on appeal. The General Division was clear that they couldn't make a determination that there are pensionable earnings that were not used to calculate the Claimant's retirement pension.<sup>18</sup>

## **Conclusion**

[30] I refuse permission to appeal. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division

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<sup>17</sup> See CPP, section 26.

<sup>18</sup> See paragraph 20 of the General Division decision. And see also the Minister's arguments at GD32-7.