



Citation: *RC v Minister of Employment and Social Development*, 2022 SST 112

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. C.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated October 29, 2021
(GP-20-992)

Tribunal member: Neil Nawaz

Decision date: March 3, 2022

File number: AD-22-92

Decision

[1] Permission to appeal is refused. This appeal will not be going forward.

Overview

[2] The Claimant claims that she was the common-law spouse of C. G., a contributor to the Canada Pension Plan (CPP) who died in December 2018. In March 2020, Service Canada refused the Claimant's application for a CPP survivor's pension. It found that she had not been cohabiting with C. G. in a conjugal relationship for a continuous period of one year at the time of his death.

[3] The Claimant appealed the Minister's decision to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and dismissed the appeal. It accepted that the Claimant and C. G. were common-law partners at one point, but it found insufficient evidence to show that they were still together at the of his death.

[4] The Claimant is now asking the Appeal Division for permission to appeal the General Division's decision.¹ She alleges that the General Division failed to consider witness testimony that she and C. G. lived together at her house in Calgary.

[5] 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

[6] 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

¹ See Claimant's application for leave to appeal to the Appeal Division dated February 3, 2022, AD01.

- based its decision on an important error of fact.²

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.³ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁴ This is a fairly easy test to meet, and it means that an applicant must present at least one arguable case.⁵

Analysis

[7] The Claimant alleges that the General Division disregarded the testimony of her witnesses, who both testified that she and C. G. lived together at her house at X, Calgary.

[8] I have carefully reviewed the record but cannot see an arguable case on this point.

[9] I don't agree that the General Division ignored the Claimant's witnesses. In its decision, the General Division summarized their testimony in some detail:⁶

- A. R., C. G.'s sister, said that, "as far as she knew," her brother and the Claimant were together for 18 years and that she considered the Claimant to be her sister-in-law; and
- P. R., the Claimant's neighbour, said that C. G. came and went from the Claimant's house and kept his belongings there.

[10] I have listened to the recording of the General Division hearing. In my view, the General Division accurately described the substance of what A. R. and P. R. had to

² *Department of Employment and Social Development Act (DESDA)*, section 58(1).

³ DESDA, sections 56(1) and 58(3).

⁴ DESDA, section 58(2).

⁵ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁶ See General Division's decision, paragraphs 14 and 15.

say.⁷ Although the General Division did not specifically address their testimony in its analysis, it clearly felt that the testimony was outweighed by other factors, including:

- The fact that the Claimant described herself and C. G. as “separated” in her application for benefits;
- The fact that the Claimant wrote in her reconsideration request that she and C. G. were working on “issues” and planning on living together in the future;
- The fact that the police did not notify the Claimant of C. G.’s death;
- The fact that the Claimant was not mentioned in C. G.’s obituary;
- The fact that C. G. paid the Claimant daily rent for the time he spent at her house; and
- The fact that the Claimant filed a court claim for spousal support against C. G. in 2016.

One of the General Division’s roles is to establish facts. In doing so, it is entitled to some leeway in how it weighs evidence. The Claimant may believe that her witness testimony proved her case, but it was just one of many factors that the General Division had to consider.

[11] The Federal Court of Appeal addressed this point in a case called *Simpson*,⁸ in which the claimant argued that the tribunal attached too much weight to selected evidence. In dismissing the application for judicial review, the Court held:

[A]ssigning weight to evidence, whether oral or written, is the province of the trier of fact. Accordingly, a court hearing an appeal or an application for judicial review may not normally substitute its view of the probative value of evidence for that of the tribunal that made the impugned finding of fact.

⁷ A. R.’s testimony can be heard from 6:15 to 15:30 of the hearing recording. P. R.’s testimony can be heard from 15:45 to 23:30.

⁸ *Simpson v Canada (Attorney General)*, 2012 FCA 82.

[12] In this case, the General Division made a full and genuine effort to sort through the relevant evidence and assess its quality. I see no reason to second-guess the General Division's decision to give some items of evidence more weight than others.

Conclusion

[13] The Claimant has not identified any grounds of appeal that have a reasonable chance of success.

[14] Permission to appeal is therefore refused.



Member, Appeal Division