Citation: *ZM v Minister of Employment and Social Development*, 2022 SST 383

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	Z. M.
Respondent:	Minister of Employment and Social Development

Decision under appeal:	General Division decision dated February 4, 2022 (GP-21-2362)

Tribunal member:	Kate Sellar
Decision date:	May 10, 2022
File number:	AD-22-172

Decision

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

Overview

[2] Z. M. (Claimant) started receiving a Canada Pension Plan retirement pension in May 2020 when he turned 65.

[3] The Claimant asked the *Minister of Employment and Social Development* Canada (Minister) to reconsider the amount of his retirement pension. He did not think that the contributory period used to calculate his retirement pension was correct. As a result, the Claimant argued that the amount of the retirement pension should be higher. The Minister maintained its original decision about the contributory period and the amount of the Claimant's retirement pension.

[4] The Claimant appealed to this Tribunal. The General Division dismissed the Claimant's appeal, finding that the Minister followed the *Canada Pension Plan* and properly calculated the Claimant's contributory period, which the Claimant argued was the source of the problem with the Minister's calculation.

[5] The Claimant asked the Appeal Division for permission to appeal the General Division's decision and the Appeal Division refused to give the Claimant permission to appeal.

[6] The Claimant also filed an Application to Rescind or Amend the General Division's decision. Sometimes called a "new facts application", a successful application to rescind or amend results in the General Division re-opening the appeal and considering new material facts.[1]

[7] A new material fact has to be **discoverable** and **material**.[2]

---

[1] See section 66 of the *Department of Employment and Social Development Act* (Act).
[2] See *Canada (Attorney General) v MacRae*, 2008 FCA 82.

- **Discoverable** means that the fact existed at the time of the first hearing but was not discoverable before the first hearing by the exercise of reasonable diligence.

- **Material** means that the fact is reasonably expected to affect the results of the first hearing.

[8] The General Division dismissed the Claimant's new facts application. The General Division decided the Claimant did not have a new material fact.

[9] The Claimant asks the Appeal Division for permission to appeal the General Division's decision on the new facts application.

[10] I must decide whether the General Division might have made an error under the *Department of Employment and Social Development Act* that would justify granting the Claimant leave to appeal.

[11] The Claimant has not raised an argument about a possible error by the General Division that would justify granting leave to appeal. The appeal will not go ahead.

Issue

[12] The issue in this appeal is as follows:

- Might the General Division have made an error of fact on the new facts application that would justify granting the Claimant leave to appeal?

Analysis

[13] First, I will describe my role at the Appeal Division in terms of reviewing General Division decisions.

[14] Second, I will explain which two documents the Claimant argues the General Division misunderstood or ignored.

[15] Third, I will explain why the Claimant's arguments have no chance of success on appeal and do not justify granting leave to appeal.

Reviewing General Division decisions

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

[17] That review is based on the wording of the *Department of Employment and Social Development 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.[3]

[18] At the leave to appeal stage, the Claimant must show that the appeal has reasonable chance of success.[4] To do this, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.[5]

No possible error of fact

[19] The Claimant has not raised a possible error of fact by the General Division that would justify granting leave to appeal the General Division's decision on the new facts application.

---

[3] See section 58(1) of the *Department of Employment and Social Development Act*.
[4] See section 58(2) of the Act.
[5] The Federal Court of Appeal confirmed this in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[20] The Claimant argues that the General Division made an error of fact about his Social Insurance Number (SIN) Application and his Earnings Details Records.

– **SIN Application**

[21] The General Division found that the Claimant's SIN application would not reasonably be expected to affect the outcome of his previous hearing at the General Division. The General Division member was aware of the Claimant's contribution history.[6]

[22] The Claimant argues that the General Division ignored or misunderstood the SIN application and what it meant for his case. When properly understood, the Claimant argues the SIN application shows that he could not have established a Record of Earnings when he turned 18 years old, and that his contributory period should not contain years for which he could not have any earnings yet.[7]

[23] The start date for the Claimant's contributory period was is 1973. However, because the contributory period showed zero earnings from 1973 to 1995, and some earnings beginning in 1996, the Claimant argues that the start date of his contributory period should be 1996.

[24] The General Division considered the Claimant's argument and found that the SIN Application would not have changed the first General Division: the start date for the contributory period is still 1973. The start and end date of the contributory period are established by law and a SIN application is not helpful on this question.

– **Earnings Details Records**

[25] The General Division decided that the CPP contributions and earnings details the Claimant provided are not new facts. The General Division had a copy of the Claimant's Statement of Contributions in the first appeal, which shows he started making CPP contributions in 1996. The General Division member considered this evidence and

---

[6] See paragraph 19 of the General Division's decision.
[7] At AD1-4, the Claimant explains that his arguments about how the General Division may have made an error of fact in its decision on the new facts application are in pages 9-11 in his document (AD1-22 to 24). Those are the only arguments I considered.

concluded that there was nothing in the Canada Pension Plan that allows the General Division to drop years out of the Claimant's contributory period because he did not have a SIN and was not yet eligible to work in Canada.[8]

[26] The Claimant argues that the General Division misunderstood the difference between a Statement of Contributions and a Record of Earnings. The Claimant says that the General Division ignored the information that the Record of Earnings provides that is distinct from a Statement of Earnings. He argues that if the General Division had properly understood the difference between these two documents, it would have decided that the Claimant's contributory period was different and he would have been eligible for higher retirement pension payments.[9]

– **No reasonable chance of success on appeal**

[27] The Claimant has not raised an argument for any error of fact that would have a reasonable chance of success on appeal.

[28] In my view, the Claimant has tried repeatedly to make the same argument about how the Minister should have calculated his contributory period and the amount of his retirement pension.

[29] The Claimant has not pinpointed any factual finding that the General Division made in its decision on the new facts application that would justify granting him leave to appeal.

[30] To make an error of fact, the General Division needed either to ignore or misunderstand some important evidence.

[31] Clearly, the General Division did not ignore the SIN application or earnings details records. Those were the very documents the General Division wrote about in its decision on the new facts application.

---

[8] See paragraph 20 of the General Division's decision.
[9] See AD1-23 to 24.

[32] The General Division reached conclusions about those documents: they were not material (they could not change the outcome of the original decision) and therefore they were not new facts.

[33] Deciding that those two documents are not material is not misunderstanding any particular fact, either. There is no factual finding here that is squarely contradicted by the evidence and therefore in error.

[34] The General Division simply reached a conclusion about what those documents mean in light of the law about calculating contributory periods and the retirement pension amount.

[35] To the extent that the Claimant is raising any possible error, it would be a mixed error of fact and law – the General Division came to the wrong conclusion about whether these documents were material.

[36] However, the Appeal Division does not grant leave to appeal on mixed questions of fact and law.[10]

[37] The General Division applied the rules for new facts applications to the Claimant's situation. The rules required that the new facts the Claimant wanted to rely on needed to be material – they needed to have the potential to change the outcome of the new facts application. The General Division decided that they were not material. The Claimant has raised no possible error in the new facts decision that has a reasonable chance of success.

Conclusion

[38] I have refused permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division

[10] See the Federal Court of Appeal's decision in *Garvey v Canada (Attorney General)*, 2018 FCA 118.