



Citation: *RS v Minister of Employment and Social Development*, 2022 SST 385

Social Security Tribunal of Canada Appeal Division

Decision

Appellant (Claimant): R. S.

Respondent: Minister of Employment and Social Development
Representative: Jared Porter

Decision under appeal: General Division decision dated August 10, 2021
(GP-21-465)

Tribunal member: Kate Sellar

Type of hearing: On the Record

Decision date: May 10, 2022

File number: AD-22-200

Decision

[1] I am dismissing the appeal. The General Division did not make any error by summarily dismissing the Claimant's appeal. These reasons explain why.

Overview

[2] R. S. (Claimant) divorced in 2007. Her ex-husband died on October 28, 2019. The Claimant applied for the Canada Pension Plan survivor's pension on December 3, 2019. The Minister of Employment and Social Development (Minister) denied the application both initially and on reconsideration.

[3] The Claimant appealed to this Tribunal. The General Division dismissed the appeal without a hearing (summary dismissal). The General Division decided that the Claimant had no reasonable chance of success on appeal.

[4] The Claimant appeals the General Division's decision.

[5] I must decide whether the General Division made an error under the *Department of Employment and Social Development Act (Act)*.

[6] The General Division did not make an error by summarily dismissing the Claimant's appeal. The Claimant had no reasonable chance of success on appeal. She was divorced from the deceased contributor at the time of his death. The appeal will not go ahead.

Issues

[7] The issues in this appeal are as follows:

- a) Did the General Division make an error by relying on evidence that the Claimant was divorced?
- b) Did the General Division fail to provide the Claimant with a fair process?

Analysis

[8] The Appeal Division does not provide an opportunity for the parties to re-argue their case in full.

[9] Instead, I reviewed the Claimant's arguments and the General Division's decision to decide whether the General Division made any errors.

[10] 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.

[11] To allow the appeal, I must find that 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.¹

Relying on evidence that the Claimant was divorced is not an error

[12] The General Division did not make an error by relying on written evidence that the Claimant was divorced.

[13] The Claimant argues that she and the deceased contributor were not divorced and the documents that show she is divorced are fraudulent.² The Claimant argues that

¹ These grounds of appeal are found in section 58(1) of the *Department of Employment and Social Development Act* (the Act).

² See AD1-6 to 9.

the General Division made an error by relying on the documents in the file that suggested that she was divorced from the contributor when he died.

[14] To be eligible for a survivor's pension, claimants must be:

- The common-law partner of the contributor at the time of the contributor's death.
- If there is no common-law partner, a person who was legally married to the contributor at the time of the contributor's death.³

[15] The Minister argues that the General Division did not make an error. The General Division cannot revisit a divorce order and does not have the power to decide whether the Claimant's divorce documents were fraudulent or whether the deceased contributor got the divorce by fraud.

[16] The Minister argues that by calling into question the legitimacy of the divorce documents at the Tribunal is not allowed in law (it's called a "collateral attack").⁴ A court order made by a court that had the power to decide (like ordering a divorce) is binding and conclusive, unless it is overturned (set aside) on appeal or lawfully rejected or voided (quashed). Since the Tribunal is not the place to appeal or lawfully quash a divorce order, the court's divorce order is binding. The attempt to say the divorce is not binding is a collateral attack and therefore not allowed.

[17] In my view, the General Division did not make an error of fact or an error of law by relying on the divorce documents. The General Division considered the available written evidence that showed that the Claimant was divorced from the deceased contributor long before he died.⁵

[18] The General Division was not able to consider or decide whether those divorce documents were fraudulent. The General Division applied the law about the survivor's

³ See section 42(1) of the *Canada Pension Plan*.

⁴ See AD2-1 to 2 for the Minister's arguments.

⁵ See paragraphs 5, 7, and 13 in the General Division's decision.

pension to the facts about the Claimant's divorce and concluded that the Claimant was not entitled to the survivor's pension.

The General Division provided the Claimant with a fair process

[19] The Claimant did not get the chance to have a hearing before the General Division, but the General Division did give her a fair process.

[20] What fairness requires depends on the circumstances and can change depending on the context.⁶ At a tribunal, a claimant should have the opportunity to make arguments on every factor or factors likely to affect the outcome of the case.⁷

[21] The Claimant believed that she would have a "live appeal" which I take to mean a hearing before the General Division decided her appeal.⁸

[22] However, the General Division can dismiss an appeal without a hearing. The General Division is required to summarily dismiss if it is satisfied that there is no reasonable chance of success on appeal. If the General Division plans to summarily dismiss an appeal, it must give the Claimant notice first, and allow the Claimant a chance to make written arguments about why the case has a reasonable chance of success.⁹ The Tribunal sent that notice.¹⁰

[23] The General Division gave the Claimant a fair opportunity to make arguments about why the case had a reasonable chance of success. The General Division provided the Claimant with a fair process. The arguments the Claimant provided as part

⁶ The Supreme Court of Canada explained this in a case called *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC).

⁷ The Federal Court explained this idea in a case called *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319.

⁸ See AD1-4.

⁹ Section 53(1) of the Act says that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success. Section 22 of the Social Security Tribunal Regulations explains that before summarily dismissing an appeal, the General Division must give notice and allow the person appealing a reasonable time to make their arguments. Then the General Division must make its decision without delay.

¹⁰ See paragraphs 6 and 7 of the General Division decision. The arguments the Claimant made are at GD1 and GD8.

of that process had no reasonable chance of success because they were based on the idea that the divorce was fraudulent.

[24] The General Division did not make any error by deciding that the Claimant's case had no reasonable chance of success.¹¹

Conclusion

[25] I am dismissing the appeal. The General Division did not make an error.

Kate Sellar

Member, Appeal Division

¹¹ The Federal Court has also talked about the reasonable chance of success idea in a case called *Miter v. Canada (Attorney General)*, 2017 FC 262.