



Citation: *HF v Minister of Employment and Social Development*, 2022 SST 591

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant (Claimant): H. F.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated May 10, 2022
(GP-21-45)

Tribunal member: Kate Sellar

Decision date: July 6, 2022

File number: AD-22-349

Decision

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

Overview

[2] H. F. (Claimant) started receiving her Canada Pension Plan (CPP) retirement pension in September 2020. That was the month after her 65th birthday.

[3] In October 2020, the Claimant asked the Minister to reconsider the monthly rate of her retirement pension. The Minister denied her request on reconsideration, explaining that the calculation of her CPP retirement pension was correct.

[4] The Claimant appealed to this Tribunal. She stated that she should be receiving the maximum amount of CPP retirement benefits. She argued that when the Minister calculates her contributory period, they should drop out (not count) the years when she had a low income.

[5] The General Division dismissed the Claimant's appeal. The General Division decided that the Claimant was receiving the correct amount for her retirement pension.

[6] I must decide whether it could be that the General Division made an error under the *Department of Employment and Social Development Act* (Act) that would justify granting the Claimant leave to appeal.

[7] The Claimant has not raised any possible error with the General Division's decision that has a reasonable chance of success on appeal. I will not grant leave to appeal. The appeal will not go ahead.

Preliminary Matter

[8] In her request for permission to appeal, the Claimant made an argument about the idea that the General Division's decision was wrong because they dismissed her

appeal. The Claimant's retirement pension payments stayed the same when she believed they should have been higher.

[9] The Tribunal sent a letter to the Claimant asking for more information about exactly which kind of error she thought the General Division made.¹ The letter gave the Claimant until July 4, 2022 to provide more information if she had any. A navigator who works at the Tribunal contacted the Claimant to be sure that she received and understood the letter, but was unable to reach the Claimant. The Claimant did not provide any further arguments for her appeal.

[10] I am satisfied that the Claimant has had a fair chance to raise her concerns about the General Division's decision.

Issue

[11] Could the General Division have made an error that would justify granting leave to appeal?

Analysis

[12] First, I will describe my role at the Appeal Division in terms of reviewing General Division decisions. Second, I will explain how I have decided that the Claimant doesn't have an argument about any error by the General Division that has a reasonable chance of success on appeal.

Reviewing General Division decisions

[13] 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, the General Division's decision, and documents in the appeal to decide whether the General Division may have made any errors.

¹ Sending those letters in this kind of situation is consistent with what the Federal Court discussed in a case called *Bossé v Canada (Attorney General)*, 2015 FC 1142.

[14] That review is based on the wording of the 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.²

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

No error that has a reasonable chance of success on appeal

[16] The Claimant has not raised an argument for an error by the General Division that has a reasonable chance of success.

[17] The Claimant argues that the Minister and the General Division should have calculated her contributory period differently. She contributed to the CPP from 1973 to 2020. She says that she should receive the maximum retirement pension available. She notes that she’s not asking for the law to change. She just wants the Minister to calculate her contributory period in a way that better accounts for times that she wasn’t fully employed due to schooling or illness. She says that the collection of data for calculating contributory periods is computerized. The calculations are based on overall averages that do not properly account for her situation. CPP retirement pension is not enough for the Claimant to live on.

² See section 58(1) of the *Department of Employment and Social Development Act* (Act).

³ See section 58(2) of the Act.

⁴ The Federal Court of Appeal confirmed this in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[18] The Claimant's appeal seems to be about the idea that the General Division made a mistake by failing to drop out additional months from her contributory period. However, there is no basis in the *Canada Pension Plan* to drop those months out of the contributory period.

[19] The General Division did not make an error of law about the Claimant's contributory period. The General Division must follow the law about when to drop time out of a contributory period. The Claimant received an explanation about how the Minister calculated her retirement pension payments.⁵ The contributory period could not be changed in the way the Claimant suggested. The General Division explained this in some detail the decision.⁶

[20] The General Division did not make an error of fact about how the contributory period rules work in the Claimant's situation. I've reviewed the documents in this appeal.⁷ The General Division did not ignore or misunderstand the evidence. The Claimant hasn't raised an error about the way the Minister applied the rules to her appeal that would have any impact on the size of her retirement pension payments.

Conclusion

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

Kate Sellar
Member, Appeal Division

⁵ See GD2-11.

⁶ See especially paragraphs 14 to 23 in the General Division's decision.

⁷ This review is consistent with what the Federal Court talked about in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.