Citation: *CD v Minister of Employment and Social Development*, 2022 SST 1288

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	C. D.
Respondent:	Minister of Employment and Social Development

Decision under appeal:	General Division decision dated August 12, 2022 (GP-21-2600)

Tribunal member:	Neil Nawaz
Decision date:	November 15, 2022
File number:	AD-22-782

Decision

[1] Leave to appeal is refused. I see no basis for this appeal to go forward.

Overview

[2] The Claimant was in a common-law relationship with D. T. from August 1993 to September 2016. The Claimant applied for a division of unadjusted pensionable earnings (also known as a DUPE or credit split) in March 2021.

[3] The Minister refused the application because the Claimant had not submitted it within four years of her separation, and D. T. had never agreed in writing to waive the four-year application deadline.

[4] The Claimant appealed the Minister's refusal to the Social Security Tribunal. She said that she attempted to file an application in May 2020 but a Service Canada employee mishandled it. She claimed that she was unable to submit another application because the COVID-19 pandemic shut down her local Service Canada centre.

[5] The Tribunal's General Division held a hearing by teleconference and dismissed the appeal because it could find no way around the four-year deadline. It also found that, even if Service Canada's physical locations were closed, the Claimant had other means of submitting an application by the deadline.

[6] The Claimant asked her Member of Parliament to intervene. One of his assistants wrote to the Appeal Division requesting permission to appeal the General Division's decision.[1] She alleged that a Service Canada agent had provided her with incorrect information about the application timelines. She also alleged that the same agent completed and sent an application on her behalf but neglected to include a Statutory Declaration of Common-law Union.

[1] See email dated October 27, 2022 by Lisa Holmes, Constituency Assistant, Office of Alex Ruff, M.P., AD01-1.

Issue

[7] There are four grounds of appeal to the Appeal Division. A claimant 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
- based its decision on an important error of fact.[2]

[8] An appeal can proceed only if the Appeal Division first grants 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 claimants must present at least one arguable case.[5]

[9] In this appeal, I had to decide whether the Claimant raised an arguable case.

Analysis

[10] 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 does not have an arguable case.

[11] The facts in this case are not in dispute:

- The Claimant and D. T. stopped living together in August 2016;
- D. T. never waived the four-year deadline to apply for the credit split; and
- The Claimant did not apply for a credit split until March 2021.

[12] The law is also clear. The Minister may approve a credit split between former common-law partners if they have been separated for more than one year and if the

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[2] See *Department of Employment and Social Development Act* (DESDA), section 58(1).
[3] See DESDA, sections 56(1) and 58(3).
[4] See DESDA, section 58(2).
[5] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

application is made within four years after the separation. The four-year deadline can be waived only if both partners agree to do so in writing.[6]

[13] The four-year statutory period had expired by the time the Claimant applied for the credit split. She was required either to have applied for the credit split within four years of the end of her common-law relationship or to have the written consent of her former common-law spouse. She did not comply with either requirement.

[14] The Claimant may have attempted to make an application before the deadline but, for whatever reason, she did not succeed. She says that extenuating circumstances delayed her application for a credit split, but they are not something I can consider.

[15] The Claimant submits that a Service Canada agent in Owen Sound completed her application in May 2020 but never forwarded it for processing.[7] That may be so, but the Claimant provided no other evidence that such an application ever existed or that it was mishandled. In any case, the Claimant already made this submission at the General Division, which did not find it compelling.[8] The General Division instead focused on things that it thought were more important—the fact that the Minister did not receive a valid application until March 2021 and the fact that the Claimant had no written waiver. The General Division also noted that, even if Service Canada offices were closed during the pandemic, the Claimant still had several alternative means to apply for the credit split.[9]

[16] In its role of fact finder, the General Division is entitled to some leeway in how it weighs evidence.[10] I don't see an arguable case that the General Division made an error in the way it considered the circumstances around the Claimant's application. Moreover, even if Service Canada did mishandle the application, as the Claimant alleges, there is nothing that this Tribunal can do about it.

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[6] See section 55.1(1)(c) of the *Canada Pension Plan*.
[7] See Claimant's application requesting leave to appeal dated October 27, 2022, AD1-1.
[8] In paragraph 4 of its decision, the General Division mentioned the Claimant's May 2020 attempt to file an application within the allotted time.
[9] See General Division, paragraphs 10 and 11.
[10] See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

[17] The *Canada Pension Plan* makes it clear that the Minister's administrative errors or erroneous advice are matters left to the Minister, and only the Minister, to correct at her discretion. This means that such errors or advice, even if proven, are beyond the jurisdiction of both the General and Appeal Divisions. In this case, the Minister has not admitted to mishandling the Claimant's application and has thus not seen fit to take any corrective action. The Claimant is in effect asking the Tribunal to force the Minister to do the "right" thing and deem her DUPE application to have been received within the four-year time limitation. Unfortunately, neither the General Division nor the Appeal Division have the authority to do what the Claimant wants.[11]

[18] The Appeal Division is not a place where claimants can simply repeat arguments that they made at the General Division. To succeed at the Appeal Division, claimants have to show how the General Division committed a specific error that falls within one or more of the permitted grounds of appeal. The Claimant has already argued that her application was lost and that the pandemic prevented her from applying again or otherwise communicating with Service Canada. The General Division considered these arguments but found no way to extend the four-year deadline. I see no reason to second-guess that conclusion.

Conclusion

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

[20] Permission to appeal is refused.

Member, Appeal Division

[11] The courts have consistently held that an administrative tribunal is not a court but a statutory decision-maker and therefore not empowered to provide any form of equitable relief. See *Pincombe v Canada (Attorney General)*, [1995] F.C.J. No. 1320 (F.C.A.), among other cases.