



Citation: *MF v Minister of Employment and Social Development*, 2022 SST 1554

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: M. F.

Respondent: Minister of Employment and Social Development
Representative: Viola Herbert

Decision under appeal: General Division decision dated August 11, 2022
(GP-21-2402)

Tribunal member: Neil Nawaz

Type of hearing: Written questions and answers
Decision date: December 27, 2022
File number: AD-22-708

Decision

[1] The Appeal is dismissed. The General Division violated a principle of procedural fairness by failing to give adequate reasons for its decision. However, having reviewed the record myself, I find that the Claimant was not entitled to a Canada Pension Plan (CPP) death benefit.

Overview

[2] The Claimant's father was a contributor to the CPP. He passed away in November 2015, and the Claimant applied for the CPP death benefit in October 2020.

[3] The Minister refused the application because the deceased contributor had not made enough contributions to the CPP. The Minister also found that the Claimant could not rely on an international agreement between Canada and Italy granting each other's residents reciprocal social security benefits.

[4] The Claimant appealed the Minister's refusal to the Social Security Tribunal's General Division. The General Division reviewed the documentary record and dismissed the appeal. It agreed with the Minister that the deceased contributor's CPP contributions were insufficient to qualify the Claimant for the death benefit. It also agreed with the Minister that the Canada-Italy agreement did not help the Claimant.

[5] The Claimant is now requesting permission to appeal from the Appeal Division. She alleges that the General Division made an error of law by relying on an old version of the Canada-Italy agreement. She notes that the General Division's decision referred to a 1979 agreement that was replaced by an update that came into effect in 2017.

[6] In October, I granted the Claimant permission to appeal because I thought she had an arguable case. At the Claimant's request, I conducted a hearing by way of written questions and answers.

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 exercise those powers;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.¹

[8] My job is to determine whether any of the Claimant's allegations fall into one or more of the permitted grounds of appeal and, if so, whether any of them have merit.

Analysis

[9] I am satisfied that the General Division breached a rule of procedural fairness by failing to support its decision with adequate reasons. Because the General Division's decision falls for this reason alone, I see no need to consider the Claimant's other allegations.

The General Division's reasons did not address the Claimant's submissions

[10] At the General Division, the Claimant based her appeal on essentially one argument: she alleged that the Minister denied her death benefit claim using an obsolete 1979 version of the social security agreement between Canada and Italy (the 1979 Agreement), one that was superseded by a social security agreement that came into force in 2017 (the 2017 Agreement).²

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

² The two agreements can be found in a web-based depository of Canada's international treaties. The Agreement of Social Security between Canada and Italy, which came into force on January 19, 1979, is at www.treaty-accord.gc.ca/text-texte.aspx?lcid=1033&id=102180&t=638019528817026241. The Agreement on Social Security between the Government of Canada and the Government of the Italian Republic, which came into force on October 1, 2017, is at www.treaty-accord.gc.ca/text-texte.aspx?lcid=1033&id=102213&t=638019528817026241.

[11] In its decision, the General Division acknowledged the Claimant's argument but promptly dismissed it:

The [Claimant] argues the Minister made the wrong decision. This is because the Minister did not use the correct version of the Agreement on Social Security between Canada and Italy. The [Claimant] says the Minister used an Agreement that has since been terminated.

The Tribunal member has reviewed the Agreement between Canada and Italy that is in force. **I agree with the Minister that this Agreement does not help the [Claimant] qualify for a CPP death benefit [emphasis added].**³

[12] I am certain that, having read this passage, the Claimant would be left with no idea why the General Division rejected her main argument.

[13] First, it is not clear what the General Division meant when it used the words "in force." Was it referring to the 1979 Agreement or the 2017 Agreement? There is no doubt that the 2017 Agreement was "in force" when the General Division issued its decision. Yet the General Division proceeded to apply the provisions of the 1979 Agreement to the deceased contributor's earnings record, finding that his single year (1966) of CPP contributions was not enough to trigger the 1979 Agreement's reciprocal provisions.⁴

[14] Second, the General Division did not explain how an agreement that was terminated in 2017 could still govern the Claimant's application, which was submitted in 2020. Perhaps the General Division concluded that the 1979 agreement applied by virtue of the fact that the deceased contributor died in 2015—two years before the 2017 Agreement came into force. If that was the case, the General Division did not say so in its written reasons, which did not name either agreement and contained no reference to any jurisdictional or transitional provisions in either the 1979 or the 2017 agreements.

[15] From what I can see, the General Division's decision didn't address the Claimant's reasons for appealing. This raises issues of natural justice and procedural

³ See General Division decision, paragraphs 22–23.

⁴ See General Division decision, paragraphs 20–21 and 24.

fairness, which demand that a decision be accompanied by an intelligible explanation. In a case called *R.E.M.*, the Supreme Court of Canada set out the test for sufficiency of reasons in the context of criminal law, quoting with approval an earlier Ontario Court of Appeal decision:

In giving reasons for judgment, the trial judge is attempting to tell the parties **what** he or she has decided and **why** he or she made that decision” (emphasis added). What is required is a logical connection between the “what”—the verdict—and the “why”—the basis for the verdict. The foundations of the judge’s decision must be discernable, when looked at in the context of the evidence, the submissions of counsel and the history of how the trial unfolded.⁵

[16] This logic also applies to decisions of administrative tribunals. In a case called *Vavilov*, the Supreme Court said that administrative decision-makers, such as the members of this Tribunal, must consider all the circumstances of a case and apply relevant law.⁶ Their decisions must be transparent, intelligible, and justified and must show an internally coherent and rational analysis that is defensible on the facts and the law.⁷

[17] It’s not enough that the General Division came to the “correct” result; it also had to show how it arrived at that result. In my view, the General Division failed to explain why it was applying the 1979 Agreement instead of the 2017 Agreement—the one in effect at the time of the Claimant’s application. That amounted to a breach of procedural fairness.

⁵ See *R. v R.E.M.*, [2008] 3 SCR 3, 2008 SCC 51, paragraph 17.

⁶ See *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, paragraphs 108-110, 126.

⁷ See *Vavilov*, paragraphs 81–86, 99.

Remedy

There are two ways to fix the General Division's error

[18] When the General Division makes an error, the Appeal Division can address it by one of two ways: (i) it can send the matter back to the General Division for a new hearing or (ii) it can give the decision that the General Division should have given.⁸

[19] The Tribunal is required to conduct proceedings as quickly as the circumstances and the considerations of fairness and natural justice allow. In addition, the Federal Court of Appeal has stated that a decision-maker should consider the delay in bringing an application for a disability pension to conclusion. It has been more than two years since the Claimant applied for the death benefit. If this matter goes back to the General Division, it will needlessly delay a final resolution.

The record is complete enough to decide this case on its merits

[20] I am satisfied that the record before me is complete. The facts in this case are uncontroversial, and both sides agree that the deceased contributor only had a single year of CPP contributions. The remaining questions to be settled turn entirely on points of law:

- Which of the two international agreements with Italy applies to the Claimant?
- How many years of Canadian contributions are required trigger totalization?

[21] Since this appeal comes down to legal issues, I am in a position to review the material that was available to the General Division and to give the decision that it should have given. In my view, the General Division happened to arrive at the right outcome, even if it didn't follow a fair process to get there. My own assessment of the record satisfies me that the deceased contributor fell short of the legal requirement to qualify his estate for the death benefit.

⁸ See DESDA, section 59(1).

The Claimant's application is governed by the 1979 Agreement

[22] I am satisfied that the 1979 Agreement governs the Claimant's death benefit application. That is because the 2017 Agreement contains this transitional provision:

Claims for benefits under consideration on the date of coming into force of this Agreement, and **claims for such benefits received after that date where entitlement would exist prior to that date through the application of the Agreement on Social Security between Canada and Italy signed in Toronto on 17 November 1977**, shall be determined according to that Agreement **in regard to rights established up to the date of coming into force of this Agreement**, and according to this Agreement in respect to rights arising from this Agreement [emphasis added].⁹

[23] To understand this provision, I find it helpful to break it into pieces. Claims for benefits that

- are received after the 2017 Agreement came into force, and
- in regard to rights established before the 2017 Agreement came into force,

shall be determined according to the 1979 Agreement.

[24] In this case, the Claimant's application was

- received in October 2020—after the 2017 Agreement came into force; and
- in regard to a right—the potential entitlement of the deceased contributor's estate to the death benefit—that was established before the 2017 Agreement came into force.

[25] The estate's right was established before October 2017 because the deceased contributor died in November 2015.

⁹ See 2017 Agreement, Article 31(4) – Consideration of Previous Events and Periods and Transitional Provisions.

[26] This means that, although the Claimant's application was submitted three years after the 2017 Agreement came into effect, the 1979 Agreement still applied to whatever rights her late father's estate had accrued.

The 1979 Agreement required two years of Canadian contributions

[27] After leaving Canada, the deceased contributor lived and worked in Italy. Under the 1979 Agreement, if a person contributed to the Italian social security system and contributed to the Canadian social security system for at least two years, then their contributions could be totalized to perhaps qualify them for CPP benefit.¹⁰

[28] However, the deceased contributor made only one year of Canadian contributions, which means that the 1979 Agreement does not allow the Claimant to qualify for a death benefit.

[29] I know that the Claimant will be disappointed by my decision, but I can only exercise such authority as is granted by the Appeal Division's enabling statute.¹¹ I have no choice but to follow the letter of the law.

Conclusion

[30] I am dismissing this appeal. The General Division failed to provide adequate reasons for its decision, but my own review of the record satisfies me that the deceased contributor's estate is not eligible for the CPP death benefit.



Member, Appeal Division

¹⁰ See Agreement of Social Security Between Canada and Italy, Article XIII: Survivor's Benefit, Disability Benefit, Children's Benefit and Death Benefit, paragraph 7.

¹¹ See *Canada (Minister of Human Resources Development) v Esler*, 2004 FC 1567.