



Citation: *BB v Minister of Employment and Social Development*, 2023 SST 284

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: B. B.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated November 22, 2022
(GP-22-509)

Tribunal member: Kate Sellar

Decision date: **March 15, 2023**

File number: AD-23-189

Decision

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

Overview

[2] B. B. (Claimant) applied for a *Canada Pension Plan* (CPP) survivor's benefit after R. F. (Contributor) died. The Minister of Employment and Social Development (Minister) refused the Claimant's application initially and on reconsideration. The Claimant appealed to the General Division of this Tribunal.

[3] In what I'll refer to as the "first decision", the General Division dismissed the Claimant's appeal, finding that the Claimant wasn't a survivor of the Contributor as defined under the CPP, so she wasn't eligible for the survivor's pension.¹

[4] The Claimant filed a request to rescind or amend the General Division's decision. I call that a "new facts application." To succeed in her new facts application, the Claimant had to show that she had facts that she didn't have at the time of the hearing (or couldn't get through reasonable diligence) that could change the outcome of the General Division's decision.

[5] In what I'll call the "second decision", the General Division dismissed the Claimant's new facts application, finding that none of the facts she raised were new.²

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

[7] I must decide whether the General Division may have made an error under the *Department of Employment and Social Development Act* (Act) that would justify granting permission to appeal.

¹ The first decision is dated November 23, 2021.

² The second decision is dated November 22, 2022.

[8] It is not arguable that the General Division made an error under the Act. I am refusing permission to appeal.

Issue

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

- a) Could the General Division have made an error in its decision dismissing the Claimant's new facts application that would justify granting leave to appeal?

No possible error that justifies giving the Claimant permission to appeal

[10] I can give the Claimant permission to appeal if their application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- interpreted or applied the law incorrectly; or
- got the facts wrong.³

The Claimant hasn't raised an arguable case

[11] The Claimant hasn't raised any argument about any possible error that the General Division made in the second decision.

[12] In her application for permission to appeal, the Claimant reminds the Appeal Division about some of the new facts that she says shows that she meets the legal test for the survivor's pension. She talks about her role in the Contributor's life in terms of

³ According to section 241(3) of the *Budget Implementation Act*, I decide the Claimant's appeal of the General Division's decision on the new facts application under section 58(1) of the *Department of Employment and Social Development Act* as it was before December 5, 2022.

taxes, the burial, executor duties, the Contributor's ashes, and the contract she had with the hospital and the funeral home.⁴

[13] These are all facts that the General Division considered when it first decided whether the Claimant was entitled to the survivor's benefit. They are not about any error that the General Division may have made when it decided that the Claimant didn't have any new facts.

[14] I have reviewed the General Division decision to decide whether there is an arguable case that the General Division ignored or misunderstood any of the evidence in the new facts application.⁵

[15] The General Division took care to explain what is required for a successful new facts application.⁶ The law required the Claimant to show she had at least one new material fact that could not have been discovered before her original General Division hearing with the exercise of reasonable diligence.⁷

[16] The Claimant had trouble describing what her new facts were. However, the General Division went through each fact she raised individually and explained that none of them were new. They were all facts that the Claimant knew by the time of the hearing. Many of them were facts that she already advised the tribunal about before the hearing (in documents) or in her testimony.⁸

[17] I see no facts that the General Division may have ignored or misunderstood that could change the outcome for the Claimant on her new facts application. Without an arguable case, I cannot grant permission to appeal.

⁴ See AD1.

⁵ This is like the approach to leave to appeal that the Federal Court talked about in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

⁶ See paragraphs 11-13 in the second General Division decision.

⁷ See section 66 of the *Department of Employment and Social Development Act* as it was prior to December 5, 2022.

⁸ See paragraphs 16 to 29 in the second General Division decision.

Conclusion

[18] I am refusing permission to appeal. This means that the appeal will not go ahead.

Kate Sellar
Member, Appeal Division