



Citation: *LB v Minister of Employment and Social Development*, 2023 SST 337

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: L. B.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated November 25, 2022
(GP-21-2581)

Tribunal member: Kate Sellar

Decision date: **March 22, 2023**

File number: AD-23-101

Decision

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

Overview

[2] L. B. (Claimant) receives both a retirement pension and a survivor's benefit.

[3] The history of the Claimant's appeal is lengthy.¹ At present, the Claimant requests permission to appeal the General Division's decision dated November 25, 2022. She continues to argue that the Minister of Employment and Social Development (Minister) has miscalculated her benefits.

[4] The General Division's decision reaches the following two conclusions:

- The Claimant failed to show that it is more likely than not that there is an error in the Minister's calculations of her retirement pension. The General Division considered in some detail that Claimant's key concerns about the use of the "escalation factor" in the calculation and ultimately rejected them because they were not consistent with the CPP. The General Division rejected the use of the escalation factor in the December 17, 2012 document because the origin of the number wasn't explained and the calculations in the letter didn't make sense.²
- The Claimant failed to show that it is more likely than not that there is an error in the calculation of the combined retirement and survivor's benefit amounts. Again, the General Division rejected the use of the numbers in the December 17, 2012 document as the origin of the numbers remained unexplained and inconsistent with the CPP.³

¹ That history is set out in the General Division decision at ADN01A in paragraphs 4 to 14.

² See paragraphs 52 to 58 in the General Division decision.

³ See paragraphs 59 to 63 in the General Division decision.

Issues

[5] The issues in this appeal are the following:

- a) Has the Claimant shown an arguable case that the General Division made an error that would justify granting permission to appeal?
- b) Has the Claimant set out evidence that was not presented to the General Division that would justify granting permission to appeal?

I am not giving the Claimant permission to appeal

[6] 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.⁴

[7] I can also give the Claimant permission to appeal if their application sets out evidence that wasn't presented to the General Division.⁵

No arguable case

[8] The Claimant hasn't raised an arguable case that the General Division made an error I can consider. As a result, I cannot grant permission to appeal.

[9] Before the General Division, the Minister relied on the Affidavit of a Senior Legislative Officer with CPP Policy and Legislation. The Affidavit was provided in support of its calculation of the Claimant's retirement pension. The Claimant challenged that calculation, but she failed to convince the General Division that the calculation was

⁴ See sections 58.1(a) and (b) of the *Department of Employment and Social Development Act (Act)*.

⁵ See section 58.1(c) of the Act.

wrong. It seems to me that the Claimant is now trying to reargue her case. She now says that there is a different calculation error impacting her appeal. The Claimant has provided a whole new calculation for her combined pension. She argues now that both the documents she relied on previously and the Minister's calculations are wrong. However, even with the numbers the Claimant provides for the calculation, she states that the CPP escalation factor she relied on at the General Division must have been correct.⁶

[10] In my view, the Claimant has not raised an arguable case here. Her argument that a different calculation applies still relies on escalation figures that the General Division rejected.⁷ The Claimant has not made an argument as to what it is about the General Division's finding on that escalation figure that is either an error of fact, and error of law, or a mixed error of fact and law.

[11] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.⁸

Conclusion

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

Kate Sellar
Member, Appeal Division

⁶ See ADN1-7, 23 and 25.

⁷ See paragraphs 54 to 58 in the General Division decision.

⁸ To the extent that the Claimant raised new calculation errors, this is new argument but not new evidence within the meaning of section 58.1(c) of the Act.