



Citation: *CK v Minister of Employment and Social Development*, 2023 SST 743

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** C. K.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** General Division decision dated March 28, 2023  
(GP-21-1440)

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**Tribunal member:** Kate Sellar

**Decision date:** June 8, 2023

**File number:** AD-23-547

## Decision

[1] I'm refusing leave (permission) to appeal. The appeal will not proceed. These are the reasons for my decision.

## Overview

[2] C. K. (Claimant) applied for a *Canada Pension Plan* (CPP) retirement pension in April 2015 when he was 60 years old. He worked in Canada from 1983 to 1993. He had valid contributions to the CPP in all those years except in 1989. He wanted his pension to start as soon as he applied.

[3] The Minister of Employment and Social Development (Minister) approved the Claimant for a retirement pension in May 2015, and payments started that month.

[4] The Claimant asked the Minister to reconsider the calculation of his contributory period, which impacted his benefit rate. The Minister maintained its decision on reconsideration, explaining that they used the correct contributory period and pensionable earnings for the Claimant to calculate his benefit rate.

[5] The Claimant appealed to this Tribunal. The General Division found that there was no error in the way the Minister calculated the Claimant's contributory period or the calculation of his total pensionable earnings.

## Issues

[6] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of law when calculating the amount of the Claimant's retirement pension?
- b) Does the Claimant's application set out evidence that wasn't presented to the General Division that could justify granting the Claimant permission to appeal?

## **I'm not giving the Claimant permission to appeal**

[7] 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;
- made an error of law;
- made an error applying the law to the facts; or
- made an error of fact.<sup>1</sup>

[8] I can also give the Claimant permission to appeal if their application sets out evidence that wasn't presented to the General Division.<sup>2</sup>

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

### **There's no arguable case for an error of law**

[10] The Claimant argues that his contributory period should begin when he entered Canada in 1983 and that it should end after 120 months. He doesn't think that his contributory period should include the years after he left Canada.<sup>3</sup>

[11] This is not how contributory periods work under the CPP. There's no arguable case that the General Division made an error about the start date and the end date for Claimant's contributory period. The CPP establishes the contributory period and there is no authority to start the period when the Claimant entered Canada and then remove years from the period because the Claimant stopped residing in Canada.

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<sup>1</sup> See sections 58.1(a) and (b) of the *Department of Employment and Social Development Act (Act)*.

<sup>2</sup> See section 58.1 (c) of the Act.

<sup>3</sup> The Claimant points to GD2-32 for this argument in his request for permission to appeal.

[12] The General Division explained that the contributory period begins the month after the claimant's 18<sup>th</sup> birthday. It ends the month before the Claimant began collecting the retirement pension.<sup>4</sup> As the General Division explained, that means the Claimant's contributory period was from April 1973 to April 2015.

[13] The Claimant argues that there is a difference in the CPP between the months that a person contributed to the CPP (which will be different for each person), and the entire contributory period (which is fixed and begins on a person's 18<sup>th</sup> birthday and ends the month before they start receiving their retirement pension). He argues that to calculate the average monthly pensionable earnings, you divide total pensionable earnings by the months the person actually contributed to the CPP, not the entire contributory period in which a person could have contributed.<sup>5</sup>

[14] The Claimant cites two sections of the CPP and reads them together to support his argument. He relies on sections 48(1) and 50 of the CPP.

[15] Section 48(1) of the CPP does explain how to calculate the average monthly pensionable earnings. It requires dividing the total pensionable earnings by the total number of months in the contributory period or by the basic number of contributory months, **whichever is greater**. In the Claimant's case, the total number of months in the contributory period is greater, and that's the number that applies. There's no arguable case that the General Division made an error when it calculated the average monthly pensionable earnings.

[16] Section 50 of the CPP is about calculating the total pensionable earnings in a contributory period, which is then used to calculate the average pensionable earnings under section 48.

[17] There's no arguable case that the General Division misapplied sections 48 and 50 in the CPP. There also no arguable case that the General Division made a mistake

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<sup>4</sup> See section 49(b)(iii) of the *Canada Pension Plan*, and paragraph 21 of the General Division decision.

<sup>5</sup> See AD1-8.

when it calculated the total pensionable earnings which were then used to calculate the average pensionable earnings.

### **No new evidence**

[18] Since the Claimant hasn't set out any new evidence that the General Division didn't have, that cannot form the basis for permission to appeal either.

### **No other possible errors**

[19] I'm satisfied that there's no other argument for an error that the Claimant might have missed.<sup>6</sup> I understand why the Claimant would like the contributory period to be shorter because it would increase his retirement pension payments. However, there's no authority to drop the years he wasn't in Canada or to consider only the years he made contributions to the CPP. The law simply doesn't establish the contributory period the way the Claimant would like. The CPP requires calculating the average pensionable earnings using the total number of months in the Claimant's contributory period. There's no arguable case that the General Division made a mistake with this calculation.

### **Conclusion**

[20] Permission to appeal is refused. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division

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<sup>6</sup> See *Karadeolian v Canada (Attorney General)*, 2016 FC 615.