



Citation: *PH v Minister of Employment and Social Development*, 2024 SST 44

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

# **Leave to Appeal Decision**

**Applicant:** P. H.

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

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**Decision under appeal:** General Division decision dated August 21, 2023  
(GP-23-515)

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**Tribunal member:** Kate Sellar

**Decision date:** January 11, 2024

**File number:** AD-23-1084

## Decision

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

## Overview

[2] The Claimant turned 65 in September 2021. He applied for a Canada Pension Plan (CPP) retirement benefit. The Minister of Employment and Social Development (Minister) calculated his retirement pension payments based on 75% of his yearly wages prorated to October 1, 2021.

[3] The Claimant asked for reconsideration, arguing that his monthly payments should be higher. The Minister didn't change its position, stating that the calculation was correct.

[4] The Claimant appealed to this Tribunal. The General Division dismissed the appeal, finding that the Minister made no error in its calculations.

## Issues

[5] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of law about the Minister's calculation of the Claimant's retirement pension payments?
- b) Does the Claimant set out evidence that wasn't presented to the General Division?

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

[6] I can give the Claimant permission to appeal if the 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 of fact; or
- made an error applying the law to the facts.<sup>1</sup>

[7] 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>

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

### **No arguable case for an error of law in the calculation.**

[9] At the Appeal Division, the Claimant argues that the General Division made an error of law by attributing 25% the maximum pensionable earnings for 2021 to his post-retirement benefit since he didn't make any contributions after September 30, 2021.<sup>3</sup>

[10] The Claimant hasn't raised an arguable case for an error of law. The General Division must apply the law as it is written, and the law requires the Minister to collect the information about the Claimant's earnings for the year and then prorate them based on the date he retired.<sup>4</sup> Further, there's no arguable case the General Division made an error by stating that it's the Minister of National Revenue that determines the CPP contributions drawn from a person's pensionable earnings, not this Tribunal.<sup>5</sup>

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

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

<sup>3</sup> See AD1-4.

<sup>4</sup> See paragraphs 7 to 11 in the General Division decision.

<sup>5</sup> See section 95 of the *Canada Pension Plan* (CPP).

[11] I see no argument here that the General Division made a mistake by finding that the Minister's calculations for the retirement and post-retirement benefit were correct.<sup>6</sup>

[12] I've reviewed the record and I'm satisfied that the General Division didn't ignore or misunderstand the evidence.<sup>7</sup>

### **No new evidence**

[13] The Claimant hasn't set out any evidence that wasn't presented to the General Division, so that cannot form the basis for giving him permission to appeal.

### **Conclusion**

[14] I've refused the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division

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<sup>6</sup> See sections 46 and 59.1 in the CPP setting out the approach to the calculations. See also GD2-18 to 21 for the Minister's calculations in this appeal.

<sup>7</sup> For more on the need for this kind of review, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.