



Citation: *TK v Minister of Employment and Social Development*, 2024 SST 402

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: T. K.
Representative: T. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated February 27, 2024
(GP-23-1909)

Tribunal member: Kate Sellar

Decision date: April 22, 2024

File number: AD-24-299

Decision

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

Overview

[2] The Claimant applied for a Canada Pension Plan (CPP) survivor's pension when her ex-spouse (the deceased contributor) died on July 1, 2021. The Minister of Employment and Social Development (Minister) refused the application because she was neither living in a common-law relationship with the deceased contributor, nor was she married to him when he died.

[3] The Claimant asked the Minister to reconsider its decision on compassionate grounds. The Minister's reconsideration decision stated that the Claimant wasn't eligible for the survivor's pension. The Claimant appealed to this Tribunal.

[4] The General Division dismissed the Claimant's appeal. The General Division found that the Claimant didn't meet the definition of a survivor within the meaning of the CPP, so she isn't eligible for the survivor's pension. The General Division explained that it has no authority to give the Claimant the survivor's pension either on compassionate grounds, or because her divorce may have been obtained by fraud.

Issues

[5] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error that would justify giving the Claimant permission to appeal?
- b) Does the application 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.¹

[7] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.²

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

The Claimant hasn't raised an arguable case for an error by the General Division

[9] The Claimant argues that the General Division should have granted her the CPP survivor's pension because her situation is unique. She explains that she didn't know she was divorced – the deceased contributor used fraud to get the divorce finalized. The Claimant explains that she is having trouble covering the cost of rent. She needs the survivor's pension.

[10] The Claimant hasn't raised an arguable case for any error by the General Division. The General Division explained that the CPP defines a survivor as the person in a common-law relationship with the deceased contributor at the time of death (having been in such a relationship for at least a year). If there is no such common law

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

² See section 58.1(c) in the Act.

relationship, the survivor is the person who was married to the deceased when he died.³ The General Division found that the Claimant was neither married to the deceased, nor in a common-law relationship with the deceased when he died. Therefore, the Claimant didn't meet the definition of survivor and wasn't eligible to receive a survivor's pension.⁴

[11] The Claimant hasn't raised an arguable case for an error that the General Division might have made about the nature of her relationship with the deceased, or about the CPP definition of a survivor. The Claimant wants underlying facts about her divorce to be relevant in deciding whether she truly was divorced for the purpose of the survivor's pension. However, the General Division explained that it isn't equipped to decide whether the divorce was legitimate or fraudulent.⁵ There's no arguable case that the General Division could have found that the Claimant was still married at the time of death for the purpose of the CPP because the divorce was obtained fraudulently.

[12] Accordingly, the Claimant hasn't raised an arguable case for any error by the General Division, so I can't grant her permission to appeal on that basis.

No new evidence

[13] The Claimant hasn't provided any new evidence that could justify giving her permission to appeal. She provided proof of the amount of rent she pays, as well as some documents from a small claims court case against a lawyer involved in the divorce.⁶

[14] The cost of the Claimant's rent isn't in dispute. The information about the Claimant's rent cannot assist the Claimant to show that she was a survivor under the CPP, which is the issue under appeal.

³ See paragraph 9 in the General Division decision, which describes the requirements in sections 42(1) and 44(d)(ii) in the *Canada Pension Plan* (CPP).

⁴ See paragraph 10 in the General Division decision.

⁵ See paragraph 7 in the General Division decision, relying on the Appeal Division's decision in *R.S. v Minister of Employment and Social Development*, 2022 SST 285 (RS). The RS decision discusses the idea that a proceeding at the Tribunal cannot be used as a collateral attack on the legitimacy of a divorce order.

⁶ See AD1-10 to 12.

[15] Similarly, the documents about the court case against the lawyer cannot assist the Claimant to show that she is a survivor under the CPP.

[16] The documents aren't arguably relevant to any issue under appeal. Accordingly, I cannot grant the Claimant permission to appeal based on new evidence.

[17] I've reviewed the written record.⁷ I'm satisfied that the General Division didn't ignore or misunderstand any other important evidence.

Conclusion

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

Kate Sellar
Member, Appeal Division

⁷ For more on this type of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.