



Citation: *Estate of WY v Minister of Employment and Social Development*, 2024 SST 810

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Estate of W. Y.

Respondent: Minister of Employment and Social Development
Representative: Ian McRobbie

Decision under appeal: General Division decision dated March 3, 2023
(GP-23-138)

Tribunal member: Kate Sellar

Type of hearing: In Writing

Decision date: **July 12, 2024**

File number: AD-23-282

Decision

[1] I'm dismissing the appeal. These are the reasons for my decision.

Overview

[2] In August 2019, W. Y. (Claimant) asked the Minister to reconsider its decision to accept his application to split his *Canada Pension Plan* (CPP) pension credits. The Minister maintained its decision in a letter to the Claimant dated July 30, 2020.

[3] The Claimant appealed to this Tribunal on January 10, 2023. The General Division decided that the Claimant received the reconsideration decision by August 30, 2020, a month after the date on the reconsideration letter. As such, the General Division decided that the Claimant filed his appeal more than one year after the Minister communicated its reconsideration decision to the Claimant. Therefore, the General Division decided that it could not give the Claimant an extension of time to appeal.

[4] I gave the Claimant permission to appeal the General Division's decision. I found that there was an arguable case that the General Division failed to provide the Claimant with a fair process.

[5] I held a hearing on May 31, 2024. The Claimant didn't attend the hearing. The Minister was able to confirm through its database that the Claimant had recently died.¹

[6] I held a case conference on June 8, 2023. A member of the Claimant's family attended the meeting and explained that she was the estate trustee for the Claimant. I confirmed it was acceptable for the Tribunal to contact the family member by email. The Tribunal then emailed the family member a letter providing:

¹ See AD7-1.

- Information about the Claimant's appeal; and
- Listing the three items the Tribunal would require from the family member for her to represent the Claimant's estate in the litigation.²

[7] I decided to keep the appeal on hold (in abeyance) for a year to give any person (including the family member who attended the case conference) wishing to represent the Claimant's estate in this matter to come forward.³

[8] That year passed on June 8, 2024 and the Tribunal didn't hear from anyone on behalf of the estate with the information I requested.

Issue

[9] Why am I dismissing this appeal?

Analysis

I'm dismissing the appeal because no one came forward to represent the Claimant's estate.

[10] I'm dismissing the appeal because no one came forward to represent the estate.

[11] I can only make decisions that are consistent with the powers I have under the law. The law says I can dismiss an appeal or confirm, rescind, or vary the decision from the General Division (in full or in part). I must give my decision in writing with reasons.⁴

[12] The Tribunal's rules don't provide a process for handling an appeal after a claimant dies, but they do allow the Tribunal to develop its own procedures to handle situations like this.⁵

² See AD8. The Tribunal requested proof of death for the Claimant and a completed and signed declaration from the family member, and if available either a court order appointing the family member as the administrator estate trustee or liquidator or the designation or agreement naming her as the liquidator.

³ See AD11.

⁴ See section 59 of the Act.

⁵ See Rule 8(5) of the *Social Security Tribunal Rules of Procedure*.

[13] Dismissing an appeal when an estate representative isn't identified is based on Supreme Court of Canada case law about the need for a live appellant.⁶ When an appellant dies, a live appellant must be substituted for the deceased to continue with the proceeding. The Court says that "[t]he substitution of a live appellant is important to the retention of jurisdiction." Otherwise, the appeal becomes "irregular," and the decision maker should dismiss the appeal.

[14] I'm satisfied that dismissing the appeal because no one came forward after a year is a simple, quick, and fair way to proceed. What fairness requires depends on the circumstances.⁷ The family member who attended the case conference had ample time to provide the documents the Tribunal needed to represent the estate. Giving the Claimant's family member a full year to provide that information is reasonable.

[15] The Minister requested that I either:

- (1) dismiss the appeal administratively, or
- (2) consider and dismiss the appeal because there is no evidence available to me from the Claimant that supports a claim that the reconsideration decision was received in 2022 as the Claimant suggested before he died. Therefore, it's more likely than not that the appeal at the General Division was more than a year late. In no case can an appeal proceed if it's filed more than a year after the Minister communicates the reconsideration decision to the Claimant.⁸

[16] In my view, there is no need to decide whether the Claimant's appeal to the General Division was eligible for an extension of time. The Tribunal resolves questions about eligibility for benefits for parties. Without an appellant, there is no longer a need to answer the question the appellant raised.

⁶ See paragraphs 26 to 31 in *R v Smith*, 2004 SCC 14.

⁷ See *Baker v Canada (Citizenship and Immigration)*, 1999 CanLII 699 (SCC).

⁸ See AD12.

Conclusion

[17] I've dismissed the appeal. There is no person who has come forward to represent the Claimant's estate in this appeal.

Kate Sellar
Member, Appeal Division