



Citation: *BS v Minister of Employment and Social Development*, 2024 SST 1082

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: B. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated June 12, 2024
(GP-23-1260)

Tribunal member: Kate Sellar

Decision date: **September 10, 2024**

File number: AD-24-587

Decision

[1] I'm refusing to give the Claimant, B. S., leave (permission) to appeal. Her appeal will not proceed. These are the reasons for my decision.

Overview

[2] The Claimant married outside Canada in 1991. The Claimant and her husband came to Canada in 1996. He contributed to the Canada Pension Plan. The Claimant said they separated in 2014, and he died in May 2021.

[3] The Claimant applied for a Canada Pension Plan (CPP) survivor's pension on December 31, 2021. The Minister of Employment and Social Development (Minister) refused her application initially and in a reconsideration letter. The Claimant appealed to this Tribunal.

[4] The General Division dismissed the Claimant's appeal. The General Division found that she wasn't entitled to the survivor's pension. The Claimant and the deceased contributor divorced in 2016 (there was a court order in the record). Since the Claimant wasn't married to the deceased contributor at the time of his death, she isn't a survivor within the meaning of the CPP. Therefore, she isn't eligible for the survivor's pension.

Issues

[5] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of fact about the Claimant's marital status 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, I must refuse permission to appeal.

The CPP Survivor's Pension

[9] As the General Division explained, for the Claimant to succeed, she had to prove that she meets the definition of a "survivor" under the CPP.³

[10] A "survivor" in relation to a deceased contributor means:

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

² See section 58.1(c) of the Act.

³ See section 42(1) of the *Canada Pension Plan* (CPP).

- a person who was the common-law partner of the contributor at the time of the contributor's death, or
- if there was no common-law partner, a person who was married to the contributor at the time of the contributor's death.

There's no arguable case for an error of fact about the Claimant's marital status.

[11] The Claimant argues at the Appeal Division (as she did in writing at the General Division) that she never divorced the deceased contributor. She says that to take the position that she is divorced is totally wrong, a fraud, and a lie.⁴ She says the Minister made a mistake.

[12] The General Division found that there was a Final Order from the Supreme Court of British Columbia dated August 11, 2016 that establishes there was a divorce that ended the marriage before the deceased contributor died.⁵ The Court Order says that the Claimant and deceased contributor, who were married outside Canada on June 6, 1991, are divorced. The divorce took effect on the 31st day after the date of the Court Order.

[13] The General Division accepted, based on the Court Order, that the Claimant was divorced from the deceased contributor at the time of his death on May 2, 2021.⁶ While the Claimant may not accept that there was a divorce, the General Division stated that it had no basis to question the Court Order that the Minister provided.

[14] At the Appeal Division, the Claimant hasn't provided any evidence or argument to support her position that the General Division made an error of fact about her marital status.

⁴ See AD1-5.

⁵ See paragraph 14 in the General Division decision. See GD2-51 and 52 for the Court Order.

⁶ See paragraphs 14, 16 and 17 in the General Division decision.

[15] In the absence of any evidence to support the idea that the General Division made an error of fact about her divorce based on the Court Order, I cannot grant the Claimant permission to appeal.

[16] There's no arguable case that the General Division made an error of fact. The Claimant and the deceased contributor were separated in 2014. The General Division relied on the existing Court Order and concluded that the Claimant was divorced and therefore not a survivor for the purpose of the benefit under the CPP.

The Claimant hasn't provided any new evidence.

[17] The Claimant hasn't provided any new evidence that wasn't already presented to the General Division. So, I cannot grant permission to appeal based on new evidence.

[18] I've reviewed the record.⁷ There's no other evidence that I can identify that the General Division may have overlooked or misunderstood. The Claimant separated from the deceased contributor and then divorced. I see no possible error in the General Division decision concluding that the Claimant isn't the survivor under the CPP.

Conclusion

[19] 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 kind of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.