



Citation: *KP v minister of Employment and Social Development*, 2024 SST 1380

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. P.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated July 2, 2024
(GP-23-1858)

Tribunal member: Kate Sellar

Decision date: **November 8, 2024**

File number: AD-24-448

Decision

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

Overview

[2] The Added Party is the daughter of W. P. (contributor) who died on June 4, 2023. She applied for a *Canada Pension Plan* (CPP) death benefit in June 2023. She said the contributor had no will and she paid for the funeral expenses. The Minister of Employment and Social Development (Minister) paid the death benefit to the Added Party.

[3] The Applicant also applied for a death benefit. She said she was the next-of-kin (spouse) of the contributor. The Minister refused the Applicant initially and on reconsideration. The Minister said it had already paid the benefit to another party (the Added Party) who met the requirements. This meant the Applicant would not receive the death benefit.

[4] The Applicant appealed the Minister's decision to this Tribunal. The General Division dismissed the Applicant's appeal. The General Division concluded that the Minister correctly paid the death benefit to the Added Party.

Issues

[5] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of fact?
- b) Is there an arguable case that the General Division made an error of law?
- c) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Applicant permission to appeal

– What do I need to decide?

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

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

– What did the General Division need to decide?

[9] The issue in the Claimant's appeal is entitlement to the CPP death benefit. As the General Division explained, the CPP sets out who is entitled to a death benefit when a contributor dies.³ By default, the death benefit is payable to the estate or succession of the deceased contributor.⁴ But there are three exceptions to this general rule. In the following three situations, the rule does not apply:⁵

¹ See sections 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 paragraph 9 in the General Division decision.

⁴ See sections 44(1)9c) and 71(1) of the *Canada Pension Plan* (CPP).

⁵ See sections 71(2) of the CPP and 64(1) of the CPP Regulations.

- After making reasonable inquiries, the Minister finds that there is no estate.
- The estate didn't apply within 60 days of the contributor's death.
- The amount of the death benefit is less than the "prescribed amount."

[10] The General Division found that the Minister made reasonable inquiries to find out if the Claimant had an estate, and there wasn't one.⁶ At that point, the law says that the Minister may pay the death benefit to the person who paid the funeral expenses.⁷

[11] The General Division found that the Minister exercised that discretion to pay the benefit to the Added Party who paid the funeral expenses judicially.⁸ The General Division also noted that once the Minister has properly paid the death benefit, it isn't required to pay it to anyone else who might apply later.⁹

There's no arguable case that the General Division made error of fact by ignoring or misunderstanding evidence.

[12] The Claimant argues that the General Division made an error of fact by ignoring her evidence about the funeral arrangements.¹⁰ She argues that the General Division should have considered and better understood:

- how the Claimant got the money to pay for the funeral in the first place, namely, from one of the contributor's other daughters; and
- The fact that it took 6 months for her to get the documents certifying her as the administrator.

[13] There's no arguable case that the General Division made an error of fact by ignoring or misunderstanding these aspects of the evidence.

⁶ See paragraph 10 in the General Division decision.

⁷ See sections 64(1) and 2 of the *Canada Pension Plan Regulations*.

⁸ See paragraphs 14 and 15 in the General Division decision.

⁹ See section 71(3) of the CPP.

¹⁰ See AD1B-3.

[14] There's no arguable case that the General Division ignored or misunderstood the evidence the Claimant relies on here. The General Division decision states:

The Appellant submitted that the Minister acted too hastily in paying the death benefit. She said the Added Party didn't have the authority to sign a contract with the funeral home. The money to pay the funeral came from an account jointly held with the contributor and another daughter. The Appellant said she was appointed administrator of the estate several months later. As I explained at the hearing, the Tribunal doesn't have jurisdiction over civil matters. Further, the Minister paid the death benefit according to the CPP legislation. If there had been an estate at the time of the applications or at the time of death of the contributor, the Minister would have waited 60 days to allow the estate time to apply. However, in this case, there was no estate then.¹¹

[15] It appears that the General Division considered where the Added Party got the money to pay for the funeral and explained that the kind of "fraud" the Applicant was raising was a matter to be addressed through civil court, not through the Minister's payment of the CPP. The Claimant might disagree with that conclusion, but there's no arguable case that the General Division ignored or misunderstood where the money came from.

[16] It appears as well that the General Division considered that it took months for the Applicant to be named the administrator of the estate. There's no arguable case that the General Division ignored or misunderstood that evidence. The General Division went on to explain what the Minister's obligations were in the law given that there was no estate when the Added Party applied.

[17] The Claimant hasn't established an arguable case for an error of fact here.

¹¹ See paragraph 13 in the General Division decision.

There's no arguable case that the General Division made an error of law based on the materials the Claimant provided.

[18] The Applicant argues that the General Division misstated how the law is supposed to work for the death benefit, and notes that she found information online that contradicts what the General Division decision says.¹²

[19] The Applicant argues that she's found documents online that contradict what the General Division found to be the state of the law on death benefit. She doesn't explain how any of these documents contradict the General Division's description of the law about death benefits.

[20] A brief review of these documents (including several copies of the instructions and application for the death benefit itself) doesn't show me anything that tells me the law is actually different from how the General Division described it. The documents also don't point to any possible error of law the General Division might have made in deciding whether the Minister acted judicially.¹³

[21] Accordingly, the Applicant hasn't shown me that there's an arguable case that the General Division misstated or misapplied the law in her appeal.

There's no arguable case that the General Division failed to provide the Applicant with a fair process during the hearing.

[22] The Applicant argues that when she spoke at the hearing, she wasn't heard at all.¹⁴ If the Claimant wasn't heard by the General Division, this could be a failure to provide a fair process.

[23] What fairness requires depends on the context of each case. The Supreme Court of Canada set out a list of factors to consider when deciding whether a process is fair.¹⁵ At the heart of this question about fairness is whether, considering all the

¹² See AD1B-3, AD1C-2, AD1C-4 and following, AD1D, and AD1E.

¹³ The General Division applied the legal test about whether the Minister acted judicially at paragraphs 12 to 15 in its decision. The legal test is set out in *Canada (Attorney General) v Uppal*, 2008 FCA 388; and *Canada Attorney General) v Purcell*, 1995 CanLII 3558 (FCA).

¹⁴ See AD1B-3.

¹⁵ See *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC).

circumstances, the people impacted by the process had a meaningful opportunity to present their case fully and fairly.

[24] Part of the duty to act fairly is allowing people the right to be heard. The right to be heard is also about giving people the chance to make arguments on every fact or factor likely to affect the decision.¹⁶

[25] The Applicant didn't describe any specific aspect of the hearing at the General Division that resulted in the unfairness or the lack of opportunity to be heard. I've listened to the recording of the hearing at the General Division.

[26] The Applicant hasn't raised an arguable case that the General Division failed to provide her with a fair process. The General Division member started the hearing by:

- explaining what she had the power to decide;
- explaining what the legislation (the law) says about how the death benefit is paid.

[27] The General Division member gave the Applicant time to explain why she thought she should receive the death benefit.¹⁷ The General Division member asked clarifying questions.

[28] The General Division also let the Applicant ask questions of the Minister's representative who attended the hearing. The Minister's representative responded to questions about why they paid the benefit as quickly as they did, and also why they didn't reverse the payment once the Applicant became the administrator.

[29] At the end of the hearing, the General Division member gave the Applicant another chance to add anything further that she wanted to say.

[30] I can see no arguable case that the General Division failed to provide the Applicant with a fair process.

¹⁶ See *Kouama v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9008 (FC).

¹⁷ This part of the hearing started at about 37:11 in the recording of the General Division hearing.

There's no new evidence that wasn't already presented at the General Division.

[31] As mentioned above, the Applicant provided:

- A document that appears to be cut and paste from a website called advisor.ca that provides information about the death benefit;¹⁸
- An information sheet about how to apply for the death benefit from Service Canada;¹⁹ and
- Two copies of the Information and Instructions for the Canada Pension Plan Death Benefit Application, along with the application itself.²⁰

[32] These documents aren't related to the appeal such that they could form the basis for permission to appeal the General Division's decision.

[33] They cannot be considered sources of law that show the General Division made a mistake, and there's no chance that they can help the Applicant to establish her eligibility for the CPP death benefit, which is the subject of the appeal. Accordingly, the Applicant hasn't set out any new evidence that could form the basis for giving her permission to appeal.

[34] I've reviewed the record.²¹ I'm satisfied there's no arguable case that the General Division ignored or misinterpreted any other evidence in the Applicant's appeal that could impact the outcome.

¹⁸ See AD1C-2.

¹⁹ See AD1C-4.

²⁰ See AD1D and AD1E.

²¹ For more on this type of review by the General Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

Conclusion

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

Kate Sellar
Member, Appeal Division