



Citation: *WH v Minister of Employment and Social Development*, 2025 SST 1289

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: W. H.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated October 17, 2025
(GP-25-1101)

Tribunal member: Kate Sellar

Decision date: **December 5, 2025**

File number: AD-25-661

Decision

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

Overview

[2] The Claimant and the deceased contributor (contributor) were in a common-law relationship from 1980 to 1994. The contributor died in June 2011. The Claimant applied for the Canada Pension Plan (CPP) survivor's pension. The Minister of Employment and Social Development (Minister) refused her application initially and in a reconsideration letter. The Claimant appealed to this Tribunal. The General Division dismissed the Claimant's appeal.

[3] The General Division decided that the Claimant wasn't entitled to the CPP survivor's pension because she didn't meet the definition of the contributor's survivor in the CPP.

Issues

[4] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of law by failing to discuss the Appeal Division decision the Claimant raised?
- b) Is there an arguable case that the General Division failed to provide the Claimant with a fair process at the hearing?
- c) Is there an arguable case that the General Division ignored important evidence that it needed to discuss?
- d) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

[5] 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

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

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

There's no arguable case that the General Division made an error of law by failing to discuss an Appeal Division decision the Claimant found online.

[8] The Claimant argues that the General Division made an error of law by failing to address the Appeal Division case the Claimant found online.³ The Claimant explains that the Appeal Division decision says,

The CPP definition of a survivor does not mean that a survivor has to have been in a common-law relationship for the 12 consecutive months **immediately** before the deceased contributor died.⁴

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

² See section 58.1(c) of the Act.

³ See AD1-8 to 9.

⁴ See paragraph 11 in *DM v Minister of Employment and Social Development*, 2019 SST 621.

[9] That decision goes on to explain that it's possible for a couple to have been cohabiting in a common-law relationship even if they do not live under the same roof at all times in the year before the death. A common law partnership ends when either party considers it has ended and shows in a convincing way that their mind is made up.⁵

[10] That Appeal Division decision goes on to discuss whether the trip the common-law spouse took to another country for a three-month period in the last 12 months of the contributor's life meant that she was not the contributor's survivor. In that case, the cohabitation didn't end in the last year of the relationship as a result of the trip -- neither party clearly made up their mind to end the common-law relationship.

– **There's no arguable case that the General Division made an error of law by failing to discuss the Appeal Division decision the Claimant raised.**

[11] The Claimant hasn't raised an arguable case for an error of law by the General Division. I reach that conclusion by considering the following:

- The Claimant hasn't raised any principle of law that the General Division must discuss every case a party raises, regardless of whether it's relevant to the appeal.
- Appeal Division cases can be persuasive, but the General Division isn't required by law to follow them.
- The Appeal Division case the Claimant relies on was about whether a couple were still common-law spouses in the last year of the contributor's life despite living apart for several months as a result of one party taking a trip. This is quite different from having been in a common-law relationship, entering into a legal separation, and then claiming survivorship when the contributor dies well over a decade later.

⁵ See paragraph 12 in *DM v Minister of Employment and Social Development*, 2019 SST 621.

[12] Given the factors I've listed here, there's no arguable case that the General Division made an error law relating to the Appeal Division decision the Claimant relies on.

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

[13] The Claimant argues that the General Division failed to provide a fair hearing because the hearing was too brief. She says that key documents in the file (including some filed by the Minister) weren't discussed at the hearing. She argues that the General Division member should have reviewed the relevant documents and guided her through them in order to meet the requirements for procedural fairness.⁶ She also says it was unfair for the General Division to refuse to receive some additional documents after the hearing.

– The Federal Court of Appeal and Tribunal's rules help to make clear what fairness requires at the General Division.

[14] What fairness requires will vary depending on the circumstances.⁷ At the General Division, when a claimant raises a concern about fairness, the ultimate questions are:

- Whether the claimant knew the case they had to meet and had a chance to respond; and
- Whether that claimant had an impartial decision maker consider the case fully and fairly.⁸

[15] The *Social Security Tribunal Rules of Procedure* (Rules) require the General Division to use active adjudication to help parties to participate fully in the appeal

⁶ See AD1-9. The Claimant argues that it was procedural misconduct and interference for the Minister to contact her moments before the hearing started (see AD1-11 to 12). Since this was not an action that the Claimant says the Tribunal took, it cannot be the grounds for a fair process error by the General Division. I don't have the jurisdiction to consider fair process errors by the Minister.

⁷

⁸ See paragraph 10 in *Kuk v Canada (Attorney General)*, 2024 FCA 74.

process. The Rules provide a list of ways the Tribunal can actively adjudicate, including making efforts to:

- decide what issues need to be addressed;
- provide information about the law that applies to the appeal;
- help parties to understand the appeal process and the rules;
- provide information about the evidence; and
- ask the parties questions.

– **I listened to the recording of the General Division hearing.**

[16] I listened to the recording of the General Division hearing. The hearing was brief. It took place as follows:

- The General Division member identified the legal issue as whether the Claimant was eligible for the CPP survivor's pension.
- The General Division member asked the Claimant to make a solemn affirmation to tell the truth and then invited the Claimant to explain why she was entitled to the survivor's pension.
- The Claimant testified that she was in a common-law relationship until 1994 when they separated. The contributor died in 2011. She wanted to be treated the same way by the CPP as married couples who separate are treated (where the contributor isn't in another common law relationship throughout the year before the death).

- The General Division member invited the Claimant to give any other reasons she might have for appealing the reconsideration decision.⁹ The Claimant confirmed she had nothing further.¹⁰
 - The Minister's representative had the opportunity to respond to the application. The representative explained essentially that married couples who separate years before the contributor's death are not in the same position as common-law spouses who separate years before the contributor's death under the CPP. The Claimant didn't meet the requirements for a CPP survivor's pension because she didn't fall into either of the categories for being a survivor.
 - The General Division member gave the Claimant a chance to reply. The Claimant raised the quotation from the Appeal Division case I've already discussed in these reasons.
 - The General Division member gave the Claimant another chance to speak before ending the hearing. The Claimant drew the General Division member's attention to two documents that he agreed to consider.
 - The General Division refused to give the Claimant more time to produce an additional document that she said would show that she was separated from the contributor, a fact that the General Division explained was not contested (not in dispute).
- **There's no arguable case that the General Division failed to provide the Claimant with a fair process during the hearing.**

[17] There's no arguable case that the General Division member failed to provide Claimant with a fair process at the hearing.

[18] The question for me to consider isn't whether the hearing met the Claimant's expectations for length or for the breadth of documents the General Division member

⁹ At about the 7:00 minute mark in the General Division recording.

¹⁰ At about the 8:12 minute mark in the General Division recording.

covered in detail, or the number of questions the General Division member might have had.

[19] The question I need to answer is whether there's an arguable case that the General Division hearing failed to provide the Claimant with a fair chance to know the case to be met and to respond.

[20] There's no arguable case that the General Division hearing unfolded in a way that was inconsistent with fairness. The General Division identified the legal issue clearly and gave the Claimant an opportunity to give her evidence and argument. The General Division also gave her a chance to reply to the Minister's response (which set out the legal test for the Claimant again). Before closing the hearing, the General Division gave the Claimant yet another chance to speak if there was anything else she wanted to cover. The Claimant pointed the General Division member to documents in the record that the member signalled familiarity with and stated he would expressly consider.

[21] Similarly, I cannot find that it's arguable that the Claimant was prevented from making her case in any way when the General Division refused to allow her to provide additional documents after the hearing. The General Division confirmed what the documents were about and explained that they were not about any issue that was in dispute. The General Division proceeds as simply and quickly as fairness allows.¹¹

[22] There's no arguable case here that the Claimant's opportunity to know the case to be met or to make her case was in any way compromised at the General Division.

¹¹ See section 8(1) in the *Social Security Tribunal Rules of Procedure*.

There's no arguable case that the General Division overlooked any important evidence.

[23] The Claimant argues that the General Division overlooked important evidence as follows:

- The CPP credit split for June 1980 to September 1994, which she explains is a legally binding record of the common-law union, as well as the fact that they were separated (and the General Division instead focussed on the idea that she was “single”).
- The statutory declaration dated April 6, 1995 and the default child support order which show financial interdependence with the contributor.
- The tax paperwork confirming that the contributor's marital status had been adjusted to separated from 1994 to June 12, 2011 when the contributor died.
- The fact that the separation from the contributor was a result of abuse and the long-lasting financial hardship the Claimant experienced after the separation.¹²

– **Overlooking important evidence can be an error of fact.**

[24] The General Division is presumed to have considered all the evidence, even if it doesn't discuss all the evidence in the decision. The Claimant can overcome this presumption by showing that the evidence the General Division was silent about was important enough that the General Division needed to discuss it.¹³

– **The General Division explained what the law says about who is eligible for the survivor's pension.**

[25] The General Division explained that to receive a survivor's pension under the CPP, you must be a survivor of the contributor.

¹² See AD1-10 to 12.

¹³ See *Lee Villeneuve v Canada (Attorney General)*, 2012 FC 498.

[26] As the General Division explained, a survivor is either:

- A person who was married to the contributor at the time of the contributor's death; or
- A person who was the common-law partner of the contributor at the time of the contributor's death.

[27] A common-law partner is a person who cohabits with the contributor in a conjugal relationship for a continuous period of one year before the contributor's death.¹⁴

– **There's no arguable case that any of this evidence was important enough that the General Division needed to discuss it.**

[28] The Claimant hasn't raised an arguable case for an error of fact. None of the facts or documents that the Claimant says the General Division overlooked were arguably important enough that it needed to be discussed in any detail.

[29] As the General Division explained, the Claimant wasn't married to the contributor when he died. She also was no longer his common-law spouse either. They had separated years before. Accordingly, she wasn't entitled to the survivor's pension.¹⁵

[30] The facts or documents about:

- (1) why they separated many years before the contributor died, or
- (2) what their financial arrangements were after the separation, or
- (3) whether she was listed as "single" in any other paperwork in error,

aren't arguably relevant to the question of whether they were either married or cohabiting in a conjugal relationship for a continuous period of one year at the time of the contributor's death.

¹⁴ See sections 2(1), 42(1), and 44(1)(d)(ii) in the *Canada Pension Plan (CPP)*; and paragraphs 7 and 8 in the General Division decision.

¹⁵ See paragraphs 10 and 11 in the General Division decision. See also

[31] Accordingly, those documents aren't arguably important enough for the General Division to be required to discuss them. The Claimant hasn't raised an arguable case for an error of fact.

There's no new evidence that would justify giving the Claimant permission to appeal.

[32] The Claimant hasn't provided any new evidence that would justify giving her permission to appeal.

[33] I reviewed the Claimant's addendum to her application.¹⁶ She argues now that she was engaged to be married to the contributor in 1992. She refers to this as crucial evidence that the conjugal relationship continued from 1994 (when they separated) to the contributor's death in 2011. This information does not raise any arguable case for an error by the General Division. This new information isn't detailed or ineligible enough to have been "set out" for the purpose of granting permission to appeal. The information also lacks sufficient connection to the legal issue to justify giving the Claimant permission to appeal.

[34] Accordingly, new evidence also cannot form the basis for giving the Claimant permission to appeal.

[35] I've reviewed the written record.¹⁷ I'm satisfied that there's no arguable case that the General Division overlooked or misunderstood any other evidence that could change the outcome of the appeal. It's clear that the Claimant wants the rules about the survivor's pension to work differently for long separated common-law spouses, but she hasn't raised an arguable case for any error by the General Division.¹⁸

¹⁶ See AD1B-1.

¹⁷ For more on this kind of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

¹⁸ See AD1B-1.

Conclusion

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

Kate Sellar
Member, Appeal Division