



Citation: *LB v Minister of Employment and Social Development and EB*, 2023 SST 2133

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** L. B.

**Respondent:** Minister of Employment and Social Development

**Added Party:** E. B.

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**Decision under appeal:** General Division decision dated March 20, 2023  
(GP-21-2205)

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**Tribunal member:** Kate Sellar

**Decision date:** **June 1, 2023**

**File number:** AD-23-427

**Decision**

[1] I gave the Claimant permission to appeal on May 17, 2023. I'm now providing reasons for my decision, as requested by the Minister of Employment and Social Development (Minister).

## Overview

[2] L. B. (Claimant) was married to E. B. (the Added Party) in July 1984.

[3] A separated spouse can apply for and receive a *Canada Pension Plan* division of unadjusted pensionable earnings (DUPE, or credit split) if the spouses have been living separate and apart for one year or more.<sup>1</sup> The Added Party applied for a credit split in August 2020. The Minister granted it from January 1984 to December 2015. The Claimant asked the Minister to reconsider, but the Minister maintained its decision.

[4] The Claimant appealed to this Tribunal. He argued at the General Division that he wanted the period subject to the credit split to be shorter. To succeed, he needed to show that he and the Added Party started living separate and apart before January 1, 2016. The General Division decided that the Claimant and the Added Party started living separate and apart in January 2016 (and not any earlier).

## Issue

[5] Why did I give the Claimant permission to appeal?

## Analysis

### – The test for getting permission to appeal is easy to meet

[6] I can give the Claimant permission to appeal if their application raises an arguable case that the General Division made an error in applying the facts to the law.<sup>2</sup>

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<sup>1</sup> See section 55.1(1)(b) of the *Canada Pension Plan*.

<sup>2</sup> See section 58.1(b) of the *Department of Employment and Social Development Act*.

– **There’s an arguable case that the General Division made an error applying the facts to the law**

[7] The Claimant argues that the General Division misunderstood the facts about when he and the Added Party started living separate and apart, and therefore came to the wrong legal conclusion about the correct period for the credit split.

[8] The Claimant argues that the General Division labelled at least some of the period that he says the parties were separated as simply a bad marriage. The Claimant also makes a series of arguments about the timing of the instructions he provided to his family law lawyer about the separation.

[9] In my view, deciding precisely when the parties separated in this matter is complicated by multiple factors. As the General Division noted “it is unusual to see such different views on when the separation actually took place.”<sup>3</sup>

[10] It’s possible that the General Division did not put enough weight on the information the Claimant provided about when the Claimant and the Added Party:

- started sleeping in separate bedrooms
- dissolved their joint bank account
- paid bills separately.

[11] It may be that the General Division did not assign enough weight to the reality of the day-to-day lives of the Claimant and the Added Party living in separate parts of the house beginning in 2005. An error in weighing evidence is an error about the way the decision maker applies the facts to the law.

[12] As a result, there’s an arguable case that the General Division made an error in the way that it applied the facts to the law about living separate and apart for the purpose of the credit split. So, I gave the Claimant permission to appeal.

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<sup>3</sup> See paragraph 23 in the General Division decision.

## Next steps

[13] The appeal now goes ahead as a new proceeding. This means that the Claimant doesn't have to prove that the General Division made a mistake. Instead, the parties should focus on when the Claimant and the Added Party started living separate and apart for the purpose of deciding the appeal about the *Canada Pension Plan* credit split.

Kate Sellar  
Member, Appeal Division