



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *The Estate of J. F. v. Minister of Employment and Social Development*,  
2017 SSTADIS 694

Tribunal File Number: AD-17-624

BETWEEN:

**The Estate of J. F.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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DECISION BY: Neil Nawaz

DATE OF DECISION: November 29, 2017

## DECISION AND REASONS

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] The late J. F., a contributor to the *Canada Pension Plan* (CPP), passed away on February 7, 2017. Prior to his death, on January 16, 2017, the deceased had signed an application for the CPP disability benefit, which the executor of his estate (Estate) submitted to the Respondent, the Minister of Employment and Social Development (Minister) on February 27, 2017.

[3] The Minister refused the application initially and upon reconsideration because Mr. J. F. had died before the application was made. The Estate then appealed this determination to the General Division of the Social Security Tribunal of Canada (Tribunal).

[4] In a decision dated August 28, 2017, the General Division, having provided requisite notice of its intention to do so, summarily dismissed the appeal because Mr. J. F.'s disability application was filed after his death, and his Estate was therefore statute-barred from receiving benefits. The General Division therefore concluded that the appeal had no reasonable chance of success.

[5] On September 14, 2017, within the specified time limitation, the Estate filed an appeal with the Tribunal's Appeal Division, reiterating its prior submission that Mr. J. F. had completed and signed a CPP disability application prior to his death. In a letter dated September 26, 2017, the Tribunal requested additional reasons for the appeal. The Estate responded by again referring to the date—January 16, 2017—on which the deceased had signed the application form.

[6] In view of the requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness and natural justice permit, I have decided to dispense with an oral hearing and consider this appeal on the basis of the existing documentary record. For the reasons that follow, I have concluded that the General Division's decision must stand.

## ISSUES

[7] The issues before me are as follows:

Issue 1: Did the General Division apply the correct test for a summary dismissal?

Issue 2: Did the General Division commit any errors in finding that Mr. J. F.'s Estate was statute-barred from receiving the CPP disability benefit?

## ANALYSIS

### **Issue 1: Did the General Division apply the correct test for summary dismissal?**

[8] I am satisfied that the General Division used the appropriate mechanism to dispose of the Estate's appeal. In paragraph 3 of its decision, the General Division invoked subsection 53(1) of the *Department of Employment and Social Development Act* (DESDA), correctly stating the provision that permits it to summarily dismiss an appeal that has no reasonable chance of success. However, I acknowledge that it is insufficient to simply cite legislation without properly applying it to the facts.

[9] The decision to summarily dismiss an appeal relies on a threshold test. It is not appropriate to consider the case on the merits in the parties' absence and then find that the appeal cannot succeed. In *Fancy v. Canada*,<sup>1</sup> the Federal Court of Appeal determined that a reasonable chance of success is akin to an arguable case at law. The Court also considered the question of summary dismissal in the context of its own legislative framework and determined that the threshold for summary dismissal is high.<sup>2</sup> The question to be asked is whether it is plain and obvious on the record that the appeal is bound to fail. The question is *not* whether the appeal must be dismissed after considering the facts, the case law and the parties' arguments. Rather, the question is whether the appeal is destined to fail regardless of the evidence or arguments that might be submitted at a hearing.

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<sup>1</sup> *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

<sup>2</sup> *Lessard-Gauvin c. Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; and *Breslaw v. Canada (Attorney General)*, 2004 FCA 264.

[10] In this case, the Estate is suggesting that Mr. J. F.'s having signed a CPP disability form prior to his death was tantamount to his having made an application in accordance with the law. In my view, it was plain and obvious on the record that this argument was bound to fail, and the General Division was within its jurisdiction to summarily dismiss the appeal.

**Issue 2: Did the General Division err in rendering its decision?**

[11] Under subsection 58(1) of the DESDA, the only grounds of appeal to the Appeal Division are that the General Division erred in law, failed to observe a principle of natural justice, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[12] The Appeal Division has no mandate under the DESDA to rehear evidence on its merits. The Estate's submissions amount to a recapitulation of the case it already submitted to the General Division. In essence, it argued that Mr. J. F. was entitled to the CPP disability benefit, and his estate should not have been denied it simply because the application form was submitted after his death.

[13] It is important to keep in mind that the burden of proof is on a claimant to show that he or she is entitled to the CPP disability benefit. My review of the record suggests that the General Division found that the Estate did not submit an application to the Minister until February 27, 2017—nearly three weeks after the date on which Mr. J. F. passed away, as noted on his certificate of death.

[14] The CPP is unambiguous. According to section 43 of the *Canada Pension Plan Regulations*, an application for a benefit under the CPP shall be made in writing at any office of the Department of Employment and Social Development. It is insufficient to merely sign a form without transmitting it to the Minister. I see no indication that the General Division erred in finding that the stamp on Mr. J. F.'s application for the CPP disability benefit<sup>3</sup> represented the date on which it arrived in the Minister's office, and the Estate did not produce any evidence to suggest otherwise.

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<sup>3</sup> Found at GD2-19 in the hearing file.

[15] Subsection 60(2) of the CPP reads as follows:

Notwithstanding anything in this Act, but subject to subsections (2.1) and (2.2), an application for a benefit, other than a death benefit, that would have been payable in respect of a month to a deceased person who, prior to the person's death, would have been entitled on approval of an application to payment of that benefit under this Act may be approved in respect of that month only if it is made within 12 months after the death of that person by the estate, the representative or heir of that person or by any person that may be prescribed by regulation.

[16] Where an application for the disability benefit is received after a deceased contributor's death, the Minister is bound by subsection 60(2.1) of the CPP, which outlines the restrictions upon which such an application may then be approved:

An application referred to in subsection (2) in respect of a disability benefit may not be approved if the application is received after December 31, 1997.

[17] The effect of these provisions is to bar a deceased contributor's estate from filing a post-mortem application for a CPP disability benefit when the application is received after December 31, 1997.

[18] Although the General Division did not explain in detail how the above provisions were applied to the facts at hand, its decision to summarily dismiss was the only outcome prescribed under the law. Although the Estate may find it unfair, the Appeal Division can exercise only such jurisdiction as is granted to it by the DESDA. Support for this position is found in *Canada v. Tucker*,<sup>4</sup> among many other cases, which have confirmed that an administrative tribunal is not a court but a statutory decision-maker and, therefore, not empowered to provide any form of equitable relief.

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<sup>4</sup> *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278.

## CONCLUSION

[19] Mr. J. F.'s Estate has failed to demonstrate how the General Division erred in summarily dismissing its appeal. This appeal is therefore dismissed.



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Member, Appeal Division