



Citation: *SK v Minister of Employment and Social Development*, 2022 SST 755

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: S. K.
Representative: Marcus Lennox

Respondent: Minister of Employment and Social Development
Representative: Dani Grandmaitre

Decision under appeal: General Division decision dated January 26, 2015
(GT-120343)

Tribunal member: Neil Nawaz

Type of hearing: On the Record
Decision date: August 11, 2022
File number: AD-22-378

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant applied for a Canada Pension Plan (CPP) death benefit, survivor's pension, and survivor's child's pension in September 2011. The Respondent refused the applications because the Appellant's late spouse (the deceased) had not made enough contributions to the CPP. The Appellant appealed that decision to the Office of the Commissioner of Review Tribunals and, after that body was abolished, her appeal was transferred to its successor, the Social Security Tribunal's General Division.

[3] In January 2015, the General Division summarily dismissed the Claimant's appeal because it was not satisfied that the appeal had a reasonable chance of success.

[4] In June 2022, the Appellant submitted a notice of appeal to the Tribunal's Appeal Division. She claimed that she did not receive the General Division's decision until January 2022. She alleged that the General Division overlooked evidence that the deceased had additional years of CPP contributions.

[6] I have decided that there is no need for an oral hearing in this case. The issues are clear, and so are the relevant facts and the applicable law. This decision is based on my review of the documents already on file—the parties' written submissions, as well as the information that was available to the General Division.

Issues

[7] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- interpreted the law incorrectly; or

- based its decision on an important error of fact.¹

[8] These are the issues as I see them:

Issue 1: Is there any limitation on the time to appeal a summary dismissal from the General Division?

Issue 2: If not, did the General Division apply the correct test for summary dismissal?

Issue 3: If so, do any of the Appellant's reasons for appealing have merit?

Analysis

[9] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the General Division did not make any errors.

There is no limitation on the time to appeal a summary dismissal

[10] Although it has been more than seven years since the General Division issued its decision to summarily dismiss the Appellant's appeal, there is nothing to prevent the Appeal Division from hearing her appeal. The reason lies in what appears to be an omission in the wording of the controlling legislation.

[11] An appeal must be brought to the Appeal Division within 90 days after the day on which the General Division communicated its decision to the appellant.² The Appeal Division may allow further time to bring an appeal, but in **no case** may an appeal be brought more than one year after the day on which the decision is communicated to the appellant.³

[12] It is notable that this provision does not address **appeals** to the Appeal Division, but rather **applications for leave to appeal**. Since the General Division summarily

¹ See *Department of Employment and Social Development Act* (DESDA), section 58(1).

² See DESDA, section 57(1)(b).

³ See DESDA, section 57(2).

dismissed her claim for CPP benefits, the Appellant does not have to apply for leave to appeal—she has an appeal as of right to the Appeal Division.

The General Division applied the correct test for summary dismissal

[13] In my view, the General Division disposed of the Appellant's appeal in the appropriate way. In its decision, the General Division correctly stated that it could summarily dismiss an appeal if it had no reasonable chance of success.⁴ I am satisfied that the General Division understood the legal test and properly applied it to the facts.

[14] The threshold for summary dismissal is high.⁵ It is not enough to consider the merits of a case in the parties' absence and then find that the appeal cannot succeed. A decision-maker must determine whether it is **plain and obvious** on the record that the appeal is bound to fail.⁶ The question is **not** whether the decision-maker must dismiss the appeal after giving full consideration to the facts, the case law, and the parties' arguments. Rather, the question is whether the appeal is **destined to fail**, regardless of whatever evidence or arguments might be submitted at a hearing.

[15] In this case, the General Division dismissed the Appellant's appeal because:

- The deceased recorded only nine years of valid contributions to the CPP; and
- Those nine years of contributions were insufficient to qualify her for any of the CPP benefits for which she applied.

[16] In making these findings, the General Division correctly applied a high threshold, concluding that the appeal had "no reasonable chance of success." For reasons that I will explain in more detail, it was plain and obvious on the record that the Appellant was bound to fail.

⁴ See General Division decision, paragraph 4, citing DESDA section 53(1).

⁵ See *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; *Breslaw v Canada (Attorney General)*, 2004 FCA 264.

⁶ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

The Appellant's reasons for appealing are without merit

[17] The Appellant alleges that the General Division made an error when it found that her late husband had only nine years of contributions. She says that the General Division was wrong to say there was no evidence of further contributions by the deceased.⁷ She insists that a credit split gave the deceased two extra years of contributions—in 2010 and 2011.

[18] I fail to see merit in these submissions.

[19] The General Division relied on the deceased's record of earnings to find that he had valid CPP contributions in nine years—1977, 1978, 1979, 1985, 1986, 1989, 1990, 1991, and 1992.⁸ As the General Division correctly noted, the Appellant needed to show that the deceased had at least 10 years of valid contributions to qualify for the death benefit, survivor's pension, or survivor's child's pension.

[20] The Appellant suggests that the record of earnings on file didn't take her credit split into account. That's not true. The Appellant applied for a credit split in November 2011,⁹ and the application was approved three months later.¹⁰ The record of earnings was generated in May 2012—two months after the credit split was approved. It contained notations ("CS") indicating that the earnings and contributions listed for each year were calculated **after** the Appellant's and the deceased's pensionable credits were divided between them. It clearly showed that, even with this division, the deceased fell short of the required 10 years of valid contributions. As the Minister notes, the credit split was never the subject of a reconsideration request or a General Division appeal.

⁷ See General Division decision, paragraph 7.

⁸ See deceased's record of earnings and contributions, generated by Service Canada on May 18, 2012, GT1-25.

⁹ The file contains a cover letter from the Appellant's member of Parliament dated October 31, 2011. The letter refers to the Appellant's enclosed application for a CPP credit split, as well as her applications for the CPP death benefit, survivor's pension, and survivor's child's pension.

¹⁰ See Service Canada's letter to the Appellant dated January 21, 2012, GT1-36.

Conclusion

[21] The General Division had no reason to doubt that the record of earnings on file was complete and up to date. It did not make any error by relying on it to find that the Appellant was not entitled to the benefits for she had applied. Because the Appellant's case had no reasonable chance of success, the General Division appropriately disposed of it by way of summary dismissal.

[22] This appeal is dismissed.



Member, Appeal Division