



Citation: *MZ v Minister of Employment and Social Development*, 2024 SST 437

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. Z.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated February 29, 2024
(GP-23-1661)

Tribunal member: Kate Sellar

Decision date: **April 26, 2024**

File number: AD-24-309

Decision

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

Overview

[2] The Claimant applied for a Canada Pension Plan (CPP) disability pension in December 2022. The Minister of Employment and Social Development (Minister) refused the application initially and in a reconsideration letter.

[3] The Claimant appealed to this Tribunal. The General Division dismissed the Claimant's appeal. The General Division found that the Claimant didn't have sufficient contributions through earnings to establish a coverage period under the CPP.

Issues

[4] The issues in this appeal are:

- a) Is there an arguable case that the General Division failed to provide the Claimant with a fair process?
- b) 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.

No arguable case that the General Division failed to provide the Claimant with a fair process

[8] The Claimant argues that the General Division failed to provide him with a fair process because the Minister didn't attend the hearing. The Claimant says he wanted the opportunity to cross-examine a representative of the Minister about his earnings, how his record of earnings can be amended, and how earnings are calculated.³

[9] What fairness requires will depend on the circumstances.⁴ The General Division must give the Claimant the opportunity to make arguments about every fact or factor likely to affect the outcome of the appeal.⁵

[10] The Claimant appealed the Minister's reconsideration decision to the General Division. The General Division allowed both parties the chance to provide written evidence and argument and held an oral hearing. The Claimant requested and received an oral hearing. The General Division doesn't have the authority to require the Minister or their representative to attend the oral hearing. The Minister did not send a representative to the hearing and relied instead on the written documents they provided to the Tribunal. The General Division member explained at the hearing that it is the Minister's choice whether to attend the hearing.

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 AD1-2.

⁴ See *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC).

⁵ See *Kouama v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9008 (FC).

[11] At the hearing, it was the Claimant who had the job of proving that he's eligible for the disability pension. He established that he met the first requirement: he is not yet 65 years of age.

[12] Next, he needed to show that he had coverage under the CPP, based on his earnings and contributions. The General Division reviewed the available evidence and found that he didn't have sufficient contributions to have a coverage period under the CPP.⁶ Without sufficient contributions to establish a coverage period, the General Division doesn't need to consider whether the Claimant had a disability.

[13] The General Division explained that the Claimant didn't have 25 years of contributions that were high enough to help establish coverage (a "valid" contribution is one that is high enough to help establish coverage). The Claimant also didn't have four years of valid contributions over any six-year period. He had contributions that were high enough in 2004, 2005, and 2006, but that wasn't enough to show four years out of six.⁷

[14] The General Division explained that it relies on the Record of Earnings (ROE) that the Minister provides to decide what the Claimant's contributions to the CPP are. The law says that we presume that the information in the record is accurate, and the record cannot be disputed once four years have passed.⁸ The Claimant raised issues with his 2003 earnings in a letter he wrote to the Minister dated December 2022.⁹ There's no doubt that letter was past the four-year deadline.

[15] There's no arguable case that the General Division failed to provide a fair process to the Claimant. The General Division gave the Claimant a chance to explain how he might qualify for the CPP disability pension by allowing him to provide his

⁶ See paragraph 9 and following in the General Division decision.

⁷ See paragraphs 10 to 12 in the General Division decision. The Claimant's contributions are at GD2-7.

⁸ See paragraph 15 in the General Division decision, relying on section 97(1) of the *Canada Pension Plan* (CPP).

⁹ See the letter starting at GD2-19.

evidence and arguments. The General Division held the hearing. But there's no arguable case that the General Division had the power to:

- require the Minister to answer questions about the ROE;
- change or update the earnings and contributions in the ROE;
- give the Claimant advice about pursuing a claim with Service Canada for administrative error;¹⁰ or
- give the Claimant advice about how CRA's processes for calculating or changing contributions to the CPP in an ROE.

No new evidence

[16] The Claimant didn't provide any new evidence. So, new evidence cannot be a reason for granting the Claimant permission to appeal either.

[17] I've reviewed the record.¹¹ I'm satisfied that the General Division didn't ignore or misunderstand any important evidence. The Claimant wants to change the ROE (and possibly make retroactive contributions to the CPP), but it is not this Tribunal or the Minister that assists in those types of requests. It is the CRA.

Conclusion

[18] Permission to appeal is refused. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division

¹⁰ See section 66 of the CPP, and paragraph 25 in the General Division decision.

¹¹ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615.