

Citation: *D. P. v. Minister of Employment and Social Development*, 2015 SSTAD 1051

Date: September 4, 2015

File number: AD-15-883

APPEAL DIVISION

Between:

D. P.

Applicant

and

**Minister of Employment and Social Development
(formerly known as the Minister of Human Resources and Skills Development)**

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] The Applicant applied for and began to receive an *Old Age Security Act* pension in 2004, beginning the month after he turned 65 years of age. The amount of the pension payable to the Applicant was determined on the basis of his marital status of divorced or single. The Respondent investigated the matter and concluded that the pension amount payable from November 2004 to December 2010 should have been calculated on the basis of his marital status as common-law. The Applicant appealed this decision to the General Division of the Social Security Tribunal of Canada. The General Division decided the appeal on the basis of the material that had been filed with the Tribunal. The form of hearing was not changed despite the Applicant's objection to it proceeding in this way. The General Division dismissed the Applicant's appeal.

[2] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. He argued that the decision erred as it stated that he was the heir of his alleged common-law spouse when in fact he was the Executor of her estate, that while they resided in the same house his relatives would visit from time to time, and his alleged common-law partner became attached to them, and that he was in dire financial straits with Service Canada being his only source of income.

[3] The Respondent filed no submissions.

ANALYSIS

[4] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has also found that an arguable case at law is akin to whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[5] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Section 58 of the Act sets out the only grounds of appeal that can be considered to grant leave to appeal a decision of the General Division (the section is set out in the Appendix to this decision). I must therefore decide if the Applicant has presented a ground of appeal under section 58 of the Act that has a reasonable chance of success on appeal.

[6] The Applicant contended, first, that the General Division made an erroneous finding of fact when it concluded that the Applicant was a beneficiary of his alleged common-law partner's estate. He submitted that he was the Executor of the estate, and spent a long time distributing the estate according to her wishes. This finding of fact may have been an error by the General Division. In order for this error to be a ground of appeal under section 58 of the Act, however, it must be an error that was made in a perverse or capricious manner, or without regard to the material before it. The Applicant did not suggest that the error was made in this fashion. On the material before me I am not satisfied that this factual error was made in a perverse or capricious manner, or without regard to the material before it. The General Division considered this evidence along with all of the other evidence in making its decision. This ground of appeal does not have a reasonable chance of success on appeal.

[7] The Applicant also wrote that his relatives came to visit while he and the alleged common-law partner resided in the same home, and that she became close to them. This evidence was considered by the General Division in making its decision. The repetition of this evidence does not point to any error made by the General Division or to any breach of the principles of natural justice. It is not a ground of appeal that has a reasonable chance of success on appeal.

[8] Finally, the Applicant contended that he is in dire financial straits. While this is very unfortunate, it does not point to any error made in the General Division decision or to any breach of the principles of natural justice. It is not a ground of appeal that can be considered.

CONCLUSION

[9] The Application is therefore refused as the Applicant has not presented a ground of appeal under section 58 of the Act that has a reasonable chance of success on appeal.

Valerie Hazlett Parker
Member, Appeal Division

APPENDIX

Department of Employment and Social Development Act

58. (1) The only grounds of appeal are that

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division 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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.