



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Y. G. v. Minister of Employment and Social Development*, 2017 SSTADIS 541

Tribunal File Number: AD-16-1309

BETWEEN:

**Y. G.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: October 20, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] On June 9, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that further retroactive payment of a survivor allowance under the *Old Age Security Act* was not payable. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on November 23, 2016.

[2] In the Application, the Applicant stated that she had received the decision on August 26, 2016. The Application was filed with the Tribunal within 90 days of that date. I am prepared to accept that the Applicant received the decision when indicated. The Application was therefore filed within the time permitted under the *Department of Employment and Social Development Act* (DESD Act).

### ANALYSIS

[3] 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 Human Resources Development)*, [1999] FCJ No. 1252 (QL). The Federal Court of Appeal has also found that an arguable case at law is akin to determining whether, legally, an appeal has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[4] The DESD Act governs the operations of this Tribunal. Subsection 58(1) of the DESD Act sets out the only grounds of appeal that can be considered to grant leave to appeal a General Division decision (the relevant section is set out in the Appendix to this decision). Accordingly, I must decide whether the Applicant has presented a ground of appeal that is within subsection 58(1) of the DESD Act and that may have a reasonable chance of success on appeal.

[5] The General Division decision states that the Tribunal member explained, in a general way, what was required to pursue an argument that the declaration of incapacity form was discriminatory as a breach of rights guaranteed under the *Canadian Charter of Rights and Freedoms* (Charter). It states further that the Applicant's representative did not wish to pursue

this. However, the representative submits that by eliminating the issue of discrimination from the General Division hearing, the General Division prevented him from making a comprehensive argument in this case, and that by not allowing evidence to be presented on this issue, the General Division was biased.

[6] First, in order to succeed in a claim of bias, the Applicant cannot simply allege bias without providing some factual basis to substantiate the claim. In this case, the Applicant has claimed that the General Division was biased because it dispensed with the discrimination argument. However, in the General Division decision, the Tribunal member clearly explained what was required to pursue a discrimination claim under the Charter and the representative chose not to pursue it. This does not establish any bias.

[7] The fact that the General Division weighed the evidence and reached a conclusion that the Applicant did not agree with also does not indicate that the General Division was biased.

[8] The General Division hearing must comply with the principles of natural justice. This means that each party must have the opportunity to fully present their case, know and meet the case against them and have the decision made based on the law and the facts. It is unclear, based on the arguments raised in the Application, whether the Applicant was fully able to present her case if all relevant arguments and evidence were not heard. The General Division hearing may not have observed the principles of natural justice. This is a ground of appeal that may have a reasonable chance of success on appeal.

[9] In *Mette v. Canada (Attorney General)*, 2016 FCA 276, the Federal Court of Appeal indicated that it is not necessary for the Appeal Division to address all the grounds of appeal that an applicant has raised. In that case, Dawson J.A. stated, in reference to subsection 58(2) of the DESD Act that, “[t]he provision does not require that individual grounds of appeal be dismissed.” Because I found that one ground of appeal may have a reasonable chance of success, I have not considered the remaining grounds of appeal that the Applicant presented.

[10] The parties are not restricted to the arguments considered in this decision at the hearing of the appeal.

## **CONCLUSION**

[11] The Application is granted for the reasons set out above.

*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.