



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. P. v. Minister of Employment and Social Development and K. P.*, 2018 SST 677

Tribunal File Number: AD-18-163

BETWEEN:

J. P.

Applicant

and

Minister of Employment and Social Development

Respondent

and

K. P.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: June 15, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant and Added Party are married, but he lives in Canada and she lives in Greece. The Applicant receives the Guaranteed Income Supplement (GIS) at the rate paid to married people, but claims that he should be paid at the singles rate, which is higher. The Respondent, the Minister of Employment and Social Development (Minister), denied the Applicant's request to increase the amount of his GIS.

[3] The Applicant appealed the Minister's decision to the Tribunal's General Division. Following a teleconference hearing, the General Division recognized that the Applicant might be entitled to the higher rate if he and his spouse were "involuntarily separated". Ultimately, however, the General Division dismissed the appeal, concluding that the Applicant had been unable to show that he and his wife met the relevant legal test.¹ In particular, the General Division found that the Applicant and Added Party had consciously chosen to live apart and that there was no compelling evidence establishing that that situation had been forced upon them.

[4] In order for the appeal to proceed, the Applicant now requires leave (or permission) to appeal to the Tribunal's Appeal Division. For the reasons set out below, I have decided that leave must be denied.

ISSUES

[5] In reaching this decision, I have considered the following issues:

- a) Has the Applicant raised a recognized ground of appeal?
- b) Did the General Division arguably overlook or misconstrue relevant evidence?

¹ *Old Age Security Act*, s 15(3)(b).

ANALYSIS

The Tribunal's legal framework

[6] The Tribunal has two divisions that operate quite differently from one another. At the Appeal Division, the focus is on whether the General Division might have committed one or more of the three reviewable errors (or grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). Generally speaking, these reviewable errors concern whether the General Division:

- a) breached a principle of natural justice or made an error relating to its jurisdiction;
- b) rendered a decision that contains an error of law; or
- c) 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.

[7] There are also procedural differences between the Tribunal's two divisions. The Appeal Division's process has two steps: the leave to appeal stage, followed by the merits stage. This appeal is at the leave to appeal stage, meaning that permission must be granted for it to proceed. This is a preliminary hurdle that is intended to filter out cases that have no reasonable chance of success.² The legal test that applicants need to meet at this stage is a low one: is there any arguable ground upon which the appeal might succeed?³ Applicants have the responsibility of showing that this legal test has been met.⁴

Issue 1: Has the Applicant raised a recognized ground of appeal?

[8] The arguments raised by the Applicant in support of his request for leave to appeal are not very clear. He has alleged that the General Division committed an error of fact and that it violated a principle of natural justice, but he has not explained either claim in any detail.⁵ He also submitted a February 17, 2017, medical document from the Center for Pulmonary Vascular

² DESD Act, s 58(2).

³ *Osaj v. Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v. Canada (Attorney General)*, 2017 FC 259 at para 16.

⁴ *Tracey v. Canada (Attorney General)*, 2015 FC 1300 at para 31.

⁵ AD1-2; AD1A.

Disease, which he claims was previously submitted to the Tribunal but never added to the appeal file.⁶

[9] In fact, this letter was among the documents that the General Division could take into account.⁷ In my view, there is no arguable case that the General Division committed an error by failing to mention this document. The General Division is not required to refer to all of the evidence, and this particular document is clearly not among those that were of such importance that they needed to be mentioned specifically.⁸

[10] Overall, it seems that the Applicant is simply unhappy with the General Division decision and is appealing in hopes of getting a different result. In particular, the Applicant reiterated the following in his letter dated April 19, 2018:⁹

- a) he and his wife live separately due to circumstances beyond their control;
- b) they maintain separate finances;
- c) the decision is unjust, and the Applicant is being penalized for his wife's decision;
and
- d) the Applicant should be allowed to live with dignity and respect and should not have to declare something that is untrue in order to receive the additional benefits that he is requesting.

[11] Critically, however, an appeal to the Appeal Division is not an opportunity to reargue the case and request a different result. The Appeal Division's role is not to hear cases afresh, reweigh the evidence, and come to its own conclusion. Rather, for leave to be granted, the Applicant must show that there is an arguable case that the General Division committed at least one of the three errors set out in section 58(1) of the DESD Act (as listed in paragraph 6 above).

[12] In this case, the Tribunal asked the Applicant on two occasions to give detailed reasons explaining why he was appealing the General Division decision, but his reasons do not fall

⁶ AD1A.

⁷ GD7.

⁸ *Simpson v. Canada (Attorney General)*, 2012 FCA 82.

⁹ AD1B.

within a recognized ground of appeal.¹⁰ As a result, the arguments he is advancing have no reasonable chance of success on appeal.

Issue 2: Did the General Division arguably overlook or misconstrue relevant evidence?

[13] Regardless of the conclusion above, I am mindful of Federal Court decisions in which the Appeal Division has been told that it should go beyond the four corners of the written materials and consider whether the General Division might have misconstrued or failed to properly account for any of the evidence.¹¹ If this is the case, then leave to appeal should normally be granted regardless of any technical problems that might be found in the request for leave to appeal.

[14] After reviewing the underlying record and examining the decision under appeal, I am satisfied that the General Division neither overlooked nor misconstrued relevant evidence. Rather, the General Division summarized the evidence in considerable detail and explained, with references to the applicable statutory provisions, why it concluded that the Applicant and Added Party were not “involuntarily separated”.

CONCLUSION

[15] While I have sympathy for the Applicant, I have concluded that his request for leave to appeal must be refused.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	J. P., self-represented
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¹⁰ See the Tribunal’s letters of March 20, 2018, and April 6, 2018.

¹¹ *Griffin v. Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v. Canada (Attorney General)*, 2016 FC 615 at para 10.