



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *C. C. v Minister of Employment and Social Development*, 2019 SST 551

Tribunal File Number: AD-19-303

BETWEEN:

C. C.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: June 7, 2019

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] C. C. (Applicant) applied for an Allowance for the Survivor. The Respondent, the Minister of Employment and Social Development, approved her request and granted the maximum retroactive pension authorized under the *Old Age Security Act*, that is for the 11 months before her application date.

[3] The Applicant asked the Minister to reconsider its decision and grant a larger retroactive pension. More particularly, the Applicant stated that she would have filed her application for an Allowance for the Survivor earlier if a Service Canada employee had not given her incorrect advice. The Minister investigated the Applicant's allegations, but the investigator was not convinced [translation] "with certainty" that incorrect advice had been given.¹ As a result, the Minister upheld its initial decision.

[4] The Applicant appealed the Minister's decision to the General Division, but it dismissed her appeal, stating that it is the jurisdiction of the Minister, not the Tribunal, to handle issues of incorrect advice.

[5] The Applicant then applied for leave to appeal the General Division's decision. As a result, before this matter can move forward, I must decide whether to grant leave. Leave to appeal is refused for the reasons stated below.

ISSUES

[6] To decide this matter, I addressed the following questions:

- a) Has the Applicant raised an arguable case on which the appeal might succeed?

¹ GD2-33.

- b) Could the General Division have misconstrued or failed to consider evidence?

ANALYSIS

Appeal Division and Legal Framework

[7] At the Appeal Division, the emphasis is on determining whether the General Division made at least one of the three errors (or grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act*. As a result, the Appeal Division generally considers whether the General Division did any of the following:

- a) Breached a principle of natural justice or made an error relating to its jurisdiction;
- b) Made an error of law;
- 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.

[8] Most cases before the Appeal Division follow a two-step process: the leave to appeal stage and the merits stage. This appeal is at the leave to appeal stage, meaning that permission must be granted for it to move forward. This preliminary step is intended to filter out appeals 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 case on which the appeal might succeed?³

Issue 1: Has the Applicant raised an arguable case on which the appeal might succeed?

[9] No, the Applicant has not raised an arguable case on which the appeal might succeed.

[10] Among her grounds of appeal, the Applicant reaffirms that she was the victim of incorrect advice from a Service Canada employee. Furthermore, she claims that the Minister's investigation into this issue includes blatant errors, and she asks that the Minister's decision be subject to a judicial review by the Federal Court.⁴

² *Department of Employment and Social Development Act*, s 58(2).

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

⁴ AD1B.

[11] The Applicant's arguments are outside the Appeal Division's jurisdiction. Her concerns relate to the Minister, not the process or the General Division decision. What is more, there is binding jurisprudence that supports the General Division's finding that the Tribunal has no power to investigate allegations of incorrect advice or to remedy them.⁵

[12] As the General Division stated, challenging the Minister's decision involves filing an application for judicial review with the Federal Court. The Applicant can begin that process by filing relevant documents with the Federal Court; the Tribunal cannot initiate that process on her behalf.

[13] I therefore observe that the Applicant's arguments in support of her application for leave to appeal have no reasonable chance of success.

Issue 2: Could the General Division have misconstrued or failed to consider evidence?

[14] Although it is up to applicants to raise arguable cases on which their appeals might succeed, I cannot stop at the precise grounds of appeal that they raise in their applications for appeal. Indeed, if the General Division could have misconstrued or failed to consider evidence, leave to appeal would normally be granted, regardless of technical deficiencies in the appeal application.⁶

[15] After reviewing the file and the decision under appeal, I am satisfied that the General Division considered the relevant evidence.

⁵ *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278; *Canada (Attorney General) v Vinet-Proulx*, 2007 FC 99.

⁶ *Tracey v Canada (Attorney General)*, 2015 FC 1300 at para 31; *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.

CONCLUSION

[16] The application for leave to appeal is refused.

Jude Samson
Member, Appeal Division

REPRESENTATIVES:	J. and R. Paulin, Representatives for the Applicant
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