



[TRANSLATION]

Citation: *N. R. v Minister of Employment and Social Development*, 2020 SST 691

Tribunal File Number: AD-20-733

BETWEEN:

**N. R.**

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: Pierre Lafontaine

Date of Decision: August 11, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal refuses leave to appeal to the Appeal Division.

### **OVERVIEW**

[2] After the Applicant's application for the Allowance (ALW) was approved under the *Old Age Security Act* and after it was automatically converted to an Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS) effective December 2007, the Minister of Employment and Social Development (Minister) received information in 2017 indicating that the Applicant had voluntarily separated, not involuntarily. The Applicant's GIS was then recalculated for the period of July 2017 to September 2017, which caused an overpayment.

[3] The Applicant requested a reconsideration of the decision, and the Minister upheld its decision. The Applicant appealed to the Tribunal's General Division.

[4] The General Division determined that the Applicant's separation with her husband on June 27, 2017, was an involuntary separation despite the filing of an application for separation from bed and board with the Superior Court of Québec.

[5] Despite the success of her appeal before the General Division, the Applicant is seeking leave to appeal the General Division decision. She mentions that she has suffered from the loss of her husband and says that she needs money. The Applicant is claiming 100 million in compensation from the Minister for the hardship and inconvenience she has experienced the past three years.

[6] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] The Tribunal refuses leave to appeal because the Applicant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

## ISSUE

[8] Does the Applicant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

## ANALYSIS

[9] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

- (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 made an error of 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.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits of the case. It is an initial hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Applicant does not have to prove her case; instead, she must establish that her appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Applicant's stated grounds of appeal has a reasonable chance of success.

### **Does the Applicant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?**

[12] Despite the success of her appeal before the General Division, the Applicant is seeking leave to appeal the General Division decision. She mentions that she has suffered from the loss of her husband and says that she needs money. The Applicant is claiming

100 million in compensation from the Minister for the hardship and inconvenience she has experienced the past three years.

[13] The General Division had to determine whether the Applicant voluntarily or involuntarily separated from her spouse and whether she is entitled to GIS benefits according to the rate for people living alone for the period of July 2017 to September 2017.

[14] The General Division determined that the Applicant's separation with her husband on June 27, 2017, was an involuntary separation despite the filing of an application for separation from bed and board with the Superior Court of Québec.

[15] I note that the Applicant, in support of her application for leave to appeal, has not identified any reviewable error such as an issue of jurisdiction or any failure by the General Division to observe a principle of natural. She has not identified errors of law or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it. Therefore, her appeal has no reasonable chance of success.

[16] Although I am sympathetic with the Applicant's situation, the Tribunal does not have the jurisdiction or power to order that compensation be given for the hardship and inconvenience she says she has experienced since 2017. That is an issue that must be debated before a court of law and not before the Tribunal.<sup>1</sup>

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<sup>1</sup> *AA v Minister of Employment and Social Development*, 2019 SST 699; *TT v Canada Employment Insurance Commission*, 2018 SST 43; *Canada (Attorney General) v Romero*, A-815-96; *Canada (Attorney General) v Tjong*, A-672-95.

**CONCLUSION**

[17] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	N. R., self-represented
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