



Citation: *PG v Minister of Employment and Social Development and The Estate of SF*, 2022 SST 918

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: P. G.

Respondent: Minister of Employment and Social Development

Added Party: The Estate of S. F.

Decision under appeal: General Division decision dated July 11, 2022
(GP-21-308)

Tribunal member: Neil Nawaz

Decision date: September 16, 2022

File number: AD-22-492

Decision

[1] Permission to appeal is refused. This appeal will not be going forward.

Overview

[2] The Applicant claims that she was in a common-law relationship with the late S. F. (who I will refer to as the “deceased.”)

[3] In October 2013, she applied for an Old Age Security Allowance. The Minister of Employment and Social Development approved the application on the basis that she was the deceased’s common-law spouse.

[4] In September 2015, the Applicant applied for a Guaranteed Income Supplement. On this application, she said she was single. That prompted the Minister to launch an investigation into the Applicant’s marital status. The Minister concluded that the Applicant had never been in a common-law relationship with the deceased. The Minister terminated the Applicant’s Allowance as of May 2019 and assessed her a \$60,000 overpayment going back to June 2014.

[5] The Applicant appealed the Minister’s decision to the Social Security Tribunal. The Tribunal’s General Division held a hearing by teleconference and dismissed the appeal, finding little evidence that the Applicant and the deceased ever had a mutual intention to “live together in a marriage-like relationship of some permanence.”¹

[6] The Applicant disagrees with the General Division’s decision and is now asking the Appeal Division for permission to appeal. She says that the General Division made an error when it found that she and the deceased were not in a common-law relationship because they did not sleep together.

¹ This formulation taken from a Pension Appeals Board decision called *Minister of Social Development v Pratt*, (January 31, 2006) CP 22323.

[7] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Applicant's appeal does not have a reasonable chance of success.

Issue

[8] There are four grounds of appeal to the Appeal Division. An applicant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.²

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.³ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁴ This is a fairly easy test to meet, and it means that an applicant must present at least one arguable case.⁵

Analysis

[9] When determining whether a common-law relationship exists, a decision-maker must take into account many factors. In a case called *Hodge*,⁶ the Supreme Court of Canada said that what matters is the intention of the parties, which can be deduced from their words and actions. Since *Hodge*, a long line of cases has held that there is no exhaustive definition for a common-law relationship and that each case must be decided according to its own particular facts.

[10] When I reviewed this file, I saw no indication that the General Division incorrectly misapplied the law or misconstrued any significant aspect of the Applicant's evidence.

² See *Department of Employment and Social Development Act* (DESDA), section 58(1).

³ See DESDA, sections 56(1) and 58(3).

⁴ See DESDA, section 58(2).

⁵ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁶ See *Hodge v Canada (Minister of Human Resources Development)*, 2004 SCC 65.

The Applicant may not agree with its conclusions, but the General Division was within its authority to draw reasonable inferences from the available evidence.⁷ For instance:

- The Applicant and the deceased did not have a sexual relationship;
- Letters from a property management company described the Applicant and the deceased as “roommates” between 2015 and 2017;
- The Applicant and the deceased may have lived together for a time, but that did not mean they were in common-law relationship;
- The Applicant was under police investigation for elder abuse and was under a restraining order not to visit the deceased after he was admitted to a nursing home;
- A letter from a community housing services organization said that the deceased was living alone in 2015 but was “precariously housed” and “experiencing acutely elevated levels of risk”;
- The Public Guardian and Trustee, which took over the deceased’s affairs in January 2018, did not recognize a common-law relationship; and
- In light of contradictions between her testimony and the documentary record, the Applicant lacked credibility.

[11] Based on these findings, the General Division concluded that the Applicant and the deceased had never been in a common-law relationship as defined by the law. I don’t see an arguable case that the General Division erred in coming to this conclusion. The *Canada Pension Plan* defines “common-law partner,” in relation to a CPP contributor, as “a person who is cohabiting with the contributor in a conjugal relationship at the relevant time, having so cohabited with the contributor for a **continuous period of at least one year**.”⁸ Since the Applicant testified that she never had a sexual relationship with the deceased, I don’t see a reasonable chance of success for her argument that the General Division was wrong to find her ineligible for the Allowance.

⁷ See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

⁸ See section 2(1) of the *Canada Pension Plan*.

Conclusion

[12] The Applicant has not identified any grounds of appeal that have a reasonable chance of success.

[13] Permission to appeal is therefore refused.



Member, Appeal Division