



Citation: *MJ v Minister of Employment and Social Development and The Estate of ED*, 2022 SST 966

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** M. J.

**Respondent:** Minister of Employment and Social Development

**Added Party:** The Estate of E. D.

---

**Decision under appeal:** General Division decision dated July 6, 2022  
(GP-22-15)

---

**Tribunal member:** Neil Nawaz

**Decision date:** September 30, 2022

**File number:** AD-22-485

## Decision

[1] Leave to appeal is refused. I see no basis for this appeal to go forward.

## Overview

[2] The Claimant was in a common-law relationship with E. D. from September 2010 to April 2017. Mr. D. died in September 2019, and the Claimant applied for a division of unadjusted pensionable earnings (also known as a DUPE or credit split) in August 2021.

[3] The Minister refused the application because the Claimant had not submitted it within four years of her separation, and Mr. D. had never agreed in writing to waive the four-year application deadline.

[4] The Claimant appealed the Minister's refusal to the Social Security Tribunal. She said she had not applied for the credit split earlier because she was nursing Mr. D. before his death, then grieving for a few years after. The Tribunal's General Division held a hearing by teleconference and dismissed the appeal because it could find no way around the four-year deadline.

[5] The Claimant then sent an email to the Tribunal asking for permission to appeal. In the email, she insisted that extenuating circumstances had prevented her from applying on time.

[6] The Tribunal replied with a letter to the Claimant reminding her that the Appeal Division can only look at specific types of error that the General Division may have made. The Tribunal asked the Claimant to provide further reasons for her appeal within a reasonable period. To date, the Tribunal has yet to hear from the Claimant.

## Issue

[7] There are four grounds of appeal to the Appeal Division. A claimant 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.<sup>1</sup>

[8] An appeal can proceed only if the Appeal Division first grants permission to appeal.<sup>2</sup> At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.<sup>3</sup> This is a fairly easy test to meet, and it means that claimants must present at least one arguable case.<sup>4</sup>

[9] In this appeal, I had to decide whether the Claimant raised an arguable case.

## Analysis

[10] 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 Claimant does not have an arguable case.

[11] The facts in this case are not in dispute:

- The Claimant and the late Mr. D. stopped living together in April 2017;
- The Claimant did not apply for a credit split until August 2021; and
- Mr. D. never waived the four-year deadline to apply for the credit split.

[12] The law is also clear. The Minister may approve a credit split between former common-law partners if they have been separated for more than one year and if the application is made within four years after the separation. The four-year deadline can be waived only if both partners agree to do so in writing.<sup>5</sup>

[13] The four-year statutory period had expired by the time the Claimant applied for the credit split. She was required either to have made the application for the credit split

---

<sup>1</sup> See *Department of Employment and Social Development Act* (DESDA), section 58(1).

<sup>2</sup> See DESDA, sections 56(1) and 58(3).

<sup>3</sup> See DESDA, section 58(2).

<sup>4</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>5</sup> See section 55.1(c) of the *Canada Pension Plan*.

within four years of the cessation of her common-law relationship, or to have the written consent of her former common-law spouse. She did not meet either requirement.

[14] The Claimant said that extenuating circumstances delayed her application for a credit split, but that is not something I can consider.

[15] The Appeal Division is not a place where you can simply repeat arguments that you made at the General Division. To succeed at the Appeal Division, you have to show how the General Division committed a specific error that falls within one or more of the permitted grounds of appeal. The Claimant has already argued that grief prevented her from applying earlier. The General Division considered that argument but found no way to extend the four-year deadline. I see no reason to second-guess that conclusion.

## **Conclusion**

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

[17] Permission to appeal is refused.



---

Member, Appeal Division