

Federal Court



Cour fédérale

**Date: 20221114**

**Docket: T-1833-18**

**Citation: 2022 FC 1549**

**Ottawa, Ontario, November 14, 2022**

**PRESENT: The Honourable Mr. Justice Gleeson**

**BETWEEN:**

**MEENA JASUJA**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA  
AND JOYTIKA JASUJA**

**Respondents**

**JUDGMENT AND REASONS**

I. Overview

[1] The Applicant Ms. Meena Jasuja [Meena or the Applicant] applies for judicial review of a decision by the Appeal Division of the Social Security Tribunal [SST-AD] denying her leave to appeal a decision of the General Division of the Social Security Tribunal [SST-GD]. The Application is brought pursuant to section 18.1 and paragraph 28(1)[g] of the *Federal Courts Act*, RSC 1985, c F-7.

## II. Background

[2] On December 21, 2012, Meena's partner died. At the time of his death, the deceased was also married to, but separated from, the individual Respondent, Ms. Joytika Jasuja.

[3] Meena married the deceased in 1993 and they remain married until their divorce in 2008. Meena reports that they had reconciled prior to the deceased's death and were cohabitating at the time of his death. In January 2013, Meena applied for a *Canada Pension Plan* [CPP] survivor's pension.

[4] After the deceased's 2008 divorce from Meena he married Joytika in 2009. The couple separated in 2010 and became engaged in a protracted divorce process. At the time of the deceased's death, Joytika and the deceased remained married. Joytika also applied for the CPP survivor's pension.

[5] In considering the two competing claims for survivorship benefits under the CPP, the Minister of Employment and Social Development [Minister] determined that Meena was entitled to the survivor's pension. The Minister found the length of Meena's cohabitation with the deceased as his common law partner prior to his death, meant that her claim superseded Joytika's claim under sections 2 and 42 of the *Canada Pension Plan*, RSC 1985, c C-8 [CPP Act]. Reconsideration of the Minister's decision was sought and the decision was upheld on June 17, 2013.

[6] The Minister's decision was then appealed to the SST-GD. The tribunal came to a different conclusion in its March 28, 2017 decision. The SST-GD held that Joytika was entitled to the pension, finding the deceased had provided sworn statements in 2012 in the course of his divorce proceedings that cast doubt on Meena's claim she had begun cohabiting with the deceased on December 18, 2010.

[7] Meena sought leave to appeal the SST-GD decision to the SST-AD.

### III. Preliminary Matter – Style of Cause

[8] The Respondent requests the style of cause be amended to remove the Minister of Employment and Social Development and name the Attorney General of Canada as a Respondent in this matter, as provided for under Rule 303(2) of the *Federal Courts Rules*, SOR 98/106 [*Rules*]).

[9] The request is not contentious. The style of cause is amended accordingly per Rule 76.

### IV. Legislative Framework

#### A. *Appeals from SST-GD decisions*

[10] In the *Department of Employment and Social Development Act*, SC 2005, c 34 [DESDA], Parliament establishes a framework for the appeal of ministerial decisions relating to CPP benefits. The DESDA provides that the Minister's decisions are appealable to the SST-GD and heard on a *de novo* basis. In considering an appeal, the SST-GD has discretion to dismiss the

appeal, to confirm, rescind or vary a decision in whole or in part, or to give the decision that should have been given (subsection 54(1) DESDA).

[11] The DESDA provides for the appeal of SST-GD decisions where leave to appeal has been sought and granted by the SST-AD (section 55 and subsection 56(1) DESDA). The SST-AD must refuse leave, unless the applicant can demonstrate the appeal has a reasonable chance of success on one of three prescribed grounds, namely that the SST-GD: (1) violated a principle of natural justice, acted beyond or refused to exercise its jurisdiction; (2) erred in law; or (3) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it (subsections 58(1) and (2) DESDA).

#### B. *CPP survivor's pension*

[12] The circumstances in which a survivor's pension is payable, and to whom, is provided for in the CPP Act. Subsection 2(1) defines the term "common-law partner" and subsection 42(1) defines the term "survivor" in relation to a deceased person:

2 (1) In this Act,

common-law partner, in relation to a contributor, means 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. For greater certainty, in the case of a contributor's death, the

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

conjoint de fait La personne qui, au moment considéré, vit avec un cotisant dans une relation conjugale depuis au moins un an. Il est entendu que, dans le cas du décès du cotisant, moment considéré s'entend du moment du décès.  
(common-law partner)

relevant time means the time of the contributor's death;

[...]

42 (1) In this Part, survivor, in relation to a deceased contributor, means

(a) if there is no person described in paragraph (b), a person who was married to the contributor at the time of the contributor's death, or

(b) a person who was the common-law partner of the contributor at the time of the contributor's death; (survivant).

[...]

42 (1) Les définitions qui suivent s'appliquent à la présente partie.

survivant S'entend :

a) à défaut de la personne visée à l'alinéa b), de l'époux du cotisant au décès de celui-ci;

b) du conjoint de fait du cotisant au décès de celui-ci. (survivant)

[13] Paragraph 42(1)(a) recognizes the person married to the contributor at the time of death as the survivor, unless there is a common-law partner at the time of death.

#### V. Decision under Review

[14] On January 5, 2018, the SST-AD dismissed the Meena's application for leave to appeal, concluding Meena had not raised a ground of appeal that had a reasonable chance of success. In seeking leave, Meena argued the SST-GD:

A. failed to adequately consider her evidence;

- B. failed to apply the applicable jurisprudence (specifically she argued the SST-GD failed to consider *McLaughlin v Canada (Attorney General)*, 2012 FC 556 [*McLaughlin*]; and
- C. failed to analyze the law with regard to the facts.

[15] The SST-AD found the SST-GD had given due consideration to all of Meena's evidence in coming to the defensible conclusion that Joytika was entitled to the survivor's pension. The SST-AD also found the SST-GD's consideration of the decision of this Court in *McLaughlin* did not raise an arguable case on appeal. Finally, the SST-AD concluded the Applicant had failed to demonstrate any reasonable chance of success on the grounds the SST-GD had misinterpreted or mischaracterized the evidence before it.

[16] The SST-AD concluded the Applicant had not identified any grounds of appeal that would have a reasonable chance of success.

#### VI. Issues and Standard of Review

[17] The Applicant raises a series of issues that are best summarized as follows:

- A. the SST-AD unreasonably concluded the Applicant's identified grounds for appeal amounted to a request for reconsideration that had no reasonable chance of success;
- B. the SST-AD erred in failing to find the SST-GD hearing was procedurally unfair; and

- C. the SST-GD erred in assessing her evidence of cohabitation with the deceased; by proceeding with the hearing of the matter despite having doubts as to the Applicant's capacity to participate; and by admitting documents and evidence from her deceased partner's family law proceeding.

[18] The Respondents submit, and I agree, that the Application raises two issues:

- A. Should this Court consider fresh objections to the SST-GD decision raised for the first time on this Application for judicial review?
- B. Is the SST-AD's decision reasonable?

[19] The SST-AD's decision is reviewable against the presumptive standard of reasonableness (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 10 [*Vavilov*]; *Hicks v Canada (Attorney General)*, 2021 FC 298 at para 15). A reasonable decision is one that is transparent, justified and intelligible. It is based on an internally coherent and rational chain of analysis and is justified in relation to the constraining facts and law (*Vavilov* at para 99).

## VII. Analysis

- A. *Objections to the SST-GD decision, raised for the first time on this Application, are not properly before the Court*

[20] In this Application, the Applicant alleges the SST-GD acted unfairly by: (1) failing to adjourn its proceedings, especially after the Applicant's son who was interpreting for her left the hearing; and (2) by admitting and considering evidence from a family law proceeding.

[21] The Respondents submit the allegations that the SST-GD breached natural justice arise for the first time in this Application. They were not raised before the SST-AD. The Respondents rely on *Hennessey v Canada*, 2016 FCA 180 at paragraph 21 to argue that alleged breaches of natural justice must be raised at the earliest practical opportunity. That is, when the individual is aware of information relevant to the alleged breach and is provided a reasonable opportunity to raise the objection (*Benitez v Canada (Minister of Citizenship and Immigration)*, 2006 FC 461 at para 220).

[22] In oral submissions, the Applicant does not dispute the failure to raise these issues before the SST-AD, but argues the fairness concerns could have been identified by the SST-AD had it examined the record. The Applicant's position implies the SST-AD was independently obligated to identify and address any breach of fairness or natural justice but cites no jurisprudence to support this proposition.

[23] A reviewing court exercises discretion in determining whether to address issues not previously raised in front of an administrative decision maker. In exercising this discretion, a court will generally decline to consider new issues. To do so in the judicial review context would be to proceed in a manner contrary to the legislature's intent of entrusting the decision-making role to the administrative decision maker. Considering and deciding issues on judicial review might also prejudice the opposing party and deny the court of an adequate evidentiary record upon which to consider the issue (*Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 24, 26).



[24] The Applicant did not raise the fairness issues set out above at the first practical opportunity. That opportunity arose before the SST-AD, where the Applicant was represented by counsel. Not having done so, the record as it relates to these issues is not complete. In addition, the legislation reflects a clear intent on the part of Parliament to have the SST-AD consider alleged breaches of fairness in SST-GD proceedings (section 58 DESDA). The circumstances do not warrant the Court stepping into that role in this instance.

[25] With respect to the evidence from the family law proceeding, the Applicant did argue before the SST-AD that this evidence had been weighed improperly by the SST-GD and that it was circumstantial. However, the Applicant did not identify the fairness concerns or the admissibility concerns regarding the evidence as issues before the SST-AD. Again, these arguments are raised improperly for the first time on judicial review.

[26] The Applicant has also raised concerns about a letter that was before the SST-GD, and further submits the SST-GD applied an overly onerous burden of proof in assessing her relationship with the deceased. Neither of these issues were raised before the SST-AD; they are not properly before me on judicial review.

[27] The numerous new issues raised by the Applicant in this Application for judicial review have not been considered.

B. *Decision is reasonable*

[28] Neither the SST-AD's decision nor its reasoning process disclose any error warranting the Court's intervention.

[29] The SST-AD accurately identified the issues raised in the application for leave to appeal, summarized the Applicant's arguments and reviewed portions of the SST-GD decision in issue. The applicable statutory test was accurately set out and the SST-AD explained why the reasonable chance of success standard had not been met.

[30] The SST-AD addressed the SST-GD's consideration of *McLaughlin*, in which the Court reiterated the rebuttable presumption set out at subsection 42(1) of the CPP Act that the person married to a deceased contributor is the deceased's survivor. The *McLaughlin* decision provided a non-exhaustive list of factors to consider in assessing whether that presumption had been rebutted in a given circumstance. The SST-AD concluded *McLaughlin* had been accurately summarized and that the SST-GD "methodically applied its principles to the facts at hand, ultimately finding that [Meena] had failed to rebut the presumption that [Joytika] was the deceased contributor's survivor" (at para 14). The SST-AD found the argument advanced on this point amounted to a request that the SST-AD reassess her case on its merits. This conclusion is one that was reasonably available to the SST-AD.

[31] In addressing the Applicant's argument that the SST-GD had misinterpreted or mischaracterized the evidence before it, the SST-AD found the SST-GD weighed the evidence and explained its reasoning, fulfilling its role as a trier of fact.

[32] The SST-AD also addressed the Applicant's reliance on *Connor Estate*, 2017 BCSC 978 [*Connor Estate*], which was published after the SST-GD's decision. In *Connor Estate*, the Supreme Court of British Columbia was interpreting the definition of "spouse" under provincial legislation, which the SST-AD found had no bearing on the interpretation and application of the CPP Act. However, the SST-AD found that the principle established in *Connor Estate* did not conflict with the jurisprudence that guided the SST-GD's analysis. Again, I see no error warranting intervention in the SST-AD's conclusion that the Applicant failed to demonstrate any reasonable chance of success on this ground.

[33] The party challenging a decision has the burden of showing it was unreasonable. A reviewing court must be convinced that the decision's shortcomings are such that the decision fails to reflect the hallmarks of a reasonable decision – justification, transparency and intelligibility. The Applicant has not satisfied that burden in relation to the SST-AD decision.

#### VIII. Conclusion

[34] The Applicant asserts the decision was unreasonable, but relies almost exclusively on alleged errors committed by the SST-GD, a number of which were never put to the SST-AD. The Application is dismissed.

[35] The Respondents have not sought costs and none are awarded.

**JUDGMENT IN T-1833-18**

**THIS COURT'S JUDGMENT is that:**

1. The style of cause is amended by removing the Minister of Employment and Social Development and naming the Attorney General of Canada as a Respondent.
2. The Application is dismissed.
3. No costs are awarded.

**"Patrick Gleeson"**

---

Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1833-18

**STYLE OF CAUSE:** MEENA JASUJA v ATTORNEY GENERAL OF CANADA AND JOYTIKA JASUJA

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** MAY 9, 2022

**JUDGMENT AND REASONS:** GLEESON J.

**DATED:** NOVEMBER 14, 2022

**APPEARANCES:**

Hans J R. Doehring FOR THE APPLICANT

Ian McRobbie FOR THE RESPONDENT  
ATTORNEY GENERAL OF CANADA

Ruth Lea Taylor FOR THE RESPONDENT  
JOYTIKA JASUJA

**SOLICITORS OF RECORD:**

Hans J R. Doehring FOR THE APPLICANT  
Barrister and Solicitor  
North Saanich, British Columbia

Attorney General of Canada FOR THE RESPONDENT  
Vancouver, British Columbia  
ATTORNEY GENERAL OF CANADA

Ruth Lea Taylor FOR THE RESPONDENT  
Barrister and Solicitor  
Burnaby, British Columbia  
JOYTIKA JASUJA