

Federal Court



Cour fédérale

**Date: 20140703**

**Docket: T-957-12**

**Citation: 2014 FC 650**

**Ottawa, Ontario, July 3, 2014**

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

**BETWEEN:**

**MARTHA GREIN**

**Applicant**

**and**

**THE MINISTER OF HUMAN RESOURCES  
AND SKILLS DEVELOPMENT**

**Respondent**

**JUDGMENT AND REASONS**

[1] The applicant brings this application for judicial review to set aside a decision by the Pension Appeals Board (Board or PAB), which refused the applicant's leave to appeal a decision of a Review Tribunal (RT). In the underlying decision, the RT found that the applicant was not entitled to a survivor's pension under the Canada Pension Plan (CPP or Plan) because she was not the common-law partner of the deceased contributor. The subsequent application for leave to appeal was refused by a PAB Member because the applicant had not raised an arguable case with

respect to her claim to a survivor's pension under the Plan. That refusal of leave to appeal is the decision under review before me. For the reasons that follow I dismiss the application for judicial review.

## **I. Background**

[2] On February 24, 2010, the applicant (Ms. Grein) applied for a survivor's pension under the Plan. In her application she indicated that she and the deceased contributor (Mr. Daneluzzi) began living together in a common-law relationship on January 27, 2009 and continued to so cohabit until the time of his death. The respondent Minister denied her application both initially and upon reconsideration because the applicant was not in a common law relationship with the deceased contributor.

[3] The applicant appealed this decision to the RT. The RT dismissed the applicant's appeal because she was not the common-law partner of the deceased contributor, and thus, not entitled to a survivor's benefit under the CPP:

[37] The appeal is dismissed. Based upon on the written and oral evidence, the Tribunal finds that on a balance of probabilities, the Appellant and the deceased, although spending a considerable time together, were not in a relationship that fulfils the accepted criteria for cohabitation for a least a year prior to the death of the deceased. The Tribunal finds that the Appellant does not meet the definition of "survivor" in relation to the deceased contributor, under the CPP legislation.

[4] Finally, the applicant sought leave to appeal the RT decision to the PAB.

[5] On April 13, 2012 the PAB refused the applicant's application for leave to appeal the RT decision. In his reasons, the Member wrote:

[3] In *Canada (Attorney General) v. Carroll*, 2011 FC 1092, O'Reilly J. explains that an applicant "will raise an arguable case if she puts forward new or additional evidence (not already considered by the RT), raises an issue not considered by the RT, or can point to an error in the RT's decision."

[4] Based upon the above comments, I am of the view that the decision of the Review Tribunal is supported by the evidence and the applicant does not have an arguable case.

## **II. Issues and Standard of Review**

[6] The review of a decision of a PAB Member to grant or deny leave to appeal involves two issues: whether the correct test was identified (arguable case); and, secondly, whether that test was adequately applied. The choice of the legal test is governed by the standard of review of correctness; its application by that of reasonableness.

[7] The test for granting leave to appeal is whether the application raises an "arguable case." An arguable case is raised if significant new or additional evidence is adduced with the application or if the application raises an issue of law or of significant facts not appropriately considered by the RT in its decision: *Callihoo v Canada (Attorney General)* [2000] FCJ No 612 (TD) at paras 15 and 22; *Canada (Attorney General) v Zakaria*, 2011 FC 136 at paras 35-36 and 38.

### III. Analysis

[8] The reasons dismissing leave to appeal are admittedly scant. They must, however, be considered in light of the record before the PAB Member, which did not include any new evidence, and the reasons for decision of the RT.

[9] In this regard, I note that the essence of the applicant's case is that there are a number of evidentiary errors in the RT decision which give rise to an arguable case. Those errors include evidence that was not considered, or if considered, given unreasonably little weight, such that the summary dismissal of the leave application without analysis, give rise to a reviewable error. More specifically, those errors include the receipt in evidence of letters from Mr. Daneluzzi's ex-wife without cross-examination, the discounting of the significance of the applicant's trip with Mr. Daneluzzi to the Maritimes, and the failure to address (1) cellular records, (2) that Mr. Daneluzzi's ex-wife had applied for a copy of her marriage certificate and taken preliminary steps to obtain a divorce, and (3), that the applicant paid for five of the fifty-two weeks when Mr. Daneluzzi lived in a hotel.

[10] Additionally, the applicant points to *Stephen v Stawecki*, 2006 CanLII 20225 (ON CA) for the proposition that maintaining a separate residence does not preclude a finding that the parties are living together in a conjugal relationship. However, I do not read the decision below as violating that proposition. The fact that the applicant continued to maintain her own residence, where she kept her pets, was but one factor in the analysis of whether a conjugal relationship had been established.

[11] These evidentiary points, whether viewed collectively or in isolation, do not suggest the existence of an arguable case. This is particularly so when situated, as they must, in the broader legal and factual context including the reasons of the RT.

[12] To receive survivor benefits under the CPP the applicant must be either married to the deceased or have been in a common-law relationship with the deceased. Critically, a common law relationship has, in section 2(1) of the *Canada Pension Plan* (RSC, 1985, c C-8), a precise definition:

[...] in relation to a contributor, means a person who is cohabiting with the contributor in a 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 "relevant time" means the time of the contributor's death

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.

[13] The applicant and the deceased met in October 2008, and the deceased died in February 2010. It was only on January 27, 2009 that the applicant asserted that they had become good friends and that she moved into the motel. At best, accepting this evidence on its face, and excluding all other indicia, there was some evidence of a continuous relationship for twelve months and two weeks.

[14] However, in the opinion of the RT, other indicia of a conjugal relationship were missing. I will not exhaustively enumerate those findings, except to say that the existence of some evidentiary points that were not addressed or not given weight does not alone render the decision unreasonable. Whether an arguable case exists depends not only on the evidence that the applicant advances, but it must also overcome, or demonstrate a reasonable prospect of overcoming, the uncontroverted evidence to the contrary as found by the RT. These facts include the absence of evidence of financial interdependence, the fact that most of the applicant's personal belongings remained at her home and the applicant's lack of knowledge about key aspects of the deceased's background, such as the circumstances of his divorce. In particular, the RT found aspects of the applicant's evidence not to be credible.

[15] The applicant did not articulate the grounds, facts and evidence in support of her application that would demonstrate a reasonable chance of success in an appeal to the PAB. As a consequence, the applicant is essentially asking this Court to reweigh the evidence as presented and previously considered by the RT and retry the case in a manner more favourable to her position. This is not available on judicial review: *Giles v Canada (AG)*, 2010 FCA 54 at para 6.

[16] In sum, the conclusion reached that there was no arguable case, read in the context of the record as a whole, is reasonable.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no order as to costs.

"Donald J. Rennie"

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Judge

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

**DOCKET:** T-957-12

**STYLE OF CAUSE:** MARTHA GREIN v THE MINISTER OF HUMAN  
RESOURCES AND SKILLS DEVELOPMENT

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 8, 2014

**REASONS FOR JUDGMENT  
AND JUDGMENT:** RENNIE J

**DATED:** JULY 3, 2014

**APPEARANCES:**

Mr. Ken J. Berger FOR THE APPLICANT

Ms. Vanessa Luna FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Berger Law Firm and the Law Offices  
of Ken J. Berger Esq. MD, JD FOR THE APPLICANT

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of Canada  
Gatineau, Québec