

Citation: *A. C. v. Minister of Employment and Social Development*, 2015 SSTAD 1044

Appeal No. AD-15-406

BETWEEN:

**A. C.**

Appellant

and

**Minister of Employment and Social Development  
(Formerly Minister of Human Resources and Skills Development)**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION  
Appeal Division – Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Hazelyn Ross

DATE OF DECISION: September 3, 2015

## **DECISION**

[1] The Appeal is dismissed.

## **INTRODUCTION**

[2] On April 29, 2015, the General Division of the Social Security Tribunal of Canada (the Tribunal), summarily dismissed the Appellant's appeal from a determination that her entitlement to a Canada Pension Plan (CPP) retirement pension would commence in November 2011. The Appellant appeals from this summary dismissal.

## **GROUND OF THE APPEAL**

[3] The Appellant relies on subsection 67(3)(b) of the CPP as the basis of her appeal.

## **ISSUE**

[4] The issue before the Tribunal can be framed in the following terms:

- a) In terms of the summary dismissal of the Appellant's appeal, did the General Division err when it summarily dismissed the appeal?

## **THE LAW**

[5] Summary dismissal of appeals is provided for by subsection 53(1) of the *Department of Employment and Social Development (DESD) Act*.<sup>1</sup> An appellant does not require leave to bring an appeal from a General Division decision that summarily dismisses their appeal.<sup>2</sup> However, the grounds of appeal remain the same, namely, an appeal may be brought where there is,

(1) a breach of natural justice;

(2) the General Division erred in law; and

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<sup>1</sup> The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

<sup>2</sup> 56 Leave – (1) an appeal to the Appeal Division may only be brought if leave to appeal is granted.

(2) Exception - Despite subsection (1) no leave is necessary in the case of an appeal brought under subsection 53(3) [summary dismissal by the General Division].

(3) the General Division based its decision on an error of fact made in a perverse or capricious manner or without regard for the material before it.<sup>3</sup>

[6] The legislative provisions which govern payment of a CPP retirement provision are set out at section 67 of the CPP. At subsection 67(2) the CPP provides as follows:

(2) *Idem* – for a retirement pension that commences to be payable on or after January 1, 1987 and where the applicant is not an estate, subject to section 62, where payment of the retirement pension is approved, the pension is payable for each month commencing with the latest of

- (a) the month in which the applicant reached 65 years of age,
- (b) the month following the month in which the applicant applied, if he was under seventy years of age,
- (c) the month following the month in which the applicant wholly or substantially ceased to be engaged in paid employment or self-employment, if he was under sixty-five years of age,
- (d) the month in which the applicant reached sixty-five years of age, if he has not wholly or substantially ceased to be engaged in paid employment or self-employment,
- (e) the twelfth month preceding the month following the month in which the applicant applied, if he was over seventy years of age when he applied,
- (f) the month in which the applicant reached seventy years of age, if he applied after reaching that age,
- (g) the month of January 1987, if the applicant has reached sixty years of age but not sixty-five years of age before that month, and
- (h) the month chosen by the applicant in his application.

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<sup>3</sup> **58(1) Grounds of Appeal –**

- 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 erred in 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.

[7] There is, however, an exception to the above provisions where the applicant makes the application after he or she became sixty-five years old. This exception is found at subsection 67(3) of the CPP. The exception provides,

(3) *Exception* – where a person who has applied to receive a retirement pension attains the age of sixty-five years before the day on which the application is received, the pension is payable commencing with the latest of

- (a) the twelfth month before the month after the month in which the applicant applied or the month of January 1995, whichever is later,
- (b) the month in which the applicant reached the age of sixty-five years, or
- (c) the month chosen by the applicant in the application.

[8] The Appellant's application fell under this latter provision and, initially, it was determined under the month she chose. Subsequently, and on her request, the Respondent re-determined the date of commencement of her retirement pension under subsection 67(3(a), namely as of November 2011.

## **SUBMISSIONS**

[9] The Appellant submits that the legislative provisions allow the Respondent to award her a retirement pension retroactive to her sixty-fifth birthdate.

[10] The Respondent's Counsel counters that the General Division correctly stated the test for summary dismissal under section 53 of the DESD Act; that it correctly set out and applied the law with respect to maximum retroactivity of the Appellant's CPP pension payments and that the General Division did not err in its application of the facts to the law. Furthermore, Counsel for the Respondent argued that the General Division decision is reasonable and did not contain any reviewable error that would permit the Appeal Division to intervene. Therefore the appeal should be dismissed.

## **ANALYSIS**

[11] The undisputed facts of this case are:

The Appellant turned sixty-five years old on October 24, 2002. She applied for a CPP retirement pension in October 2012, at which time she was seventy-five years old. In her application, the Appellant asked that her retirement pension commence in December 2012, and, initially, it did. The Appellant then asked the Respondent to reconsider the start date of her pension and on reconsideration, her retirement pension was awarded retroactive to November 2011. Before the General Division the Appellant asked that her pension be paid retroactive to October 24, 2002, that being the date she turned sixty-five years of age. In a decision dated April 29, 2015, the General Division summarily dismissed the appeal on the basis that it had no reasonable chance of success.

[12] The outcome of this appeal depends on the answer to the following question, namely, does the Tribunal have the ability to grant greater retroactivity than the eleven months granted by the Minister for the commencement of payment of the Appellant's retirement pension? For the following reasons, the answer is that it does not and, therefore, the General Division decision to summarily dismiss the appeal is reasonable.

## **STANDARD OF REVIEW**

[13] The Respondent submitted that "reasonableness" is the standard applicable to the General Division decision to summarily dismiss the appeal. In *Dunsmuir v. New Brunswick* 2008 SCC 9, the Supreme Court of Canada (S.C.C.), concluded that when reviewing a decision on questions of fact; questions of mixed fact and law; and questions of law relating to a tribunal's own statute, the standard of review is reasonableness. In this case, the issue involves a determination of fact (how old was the Appellant when she made the application) as well as law (what is the applicable legal provision where the application is made after the applicant has reached sixty-five years of age). Thus, applying *Dunsmuir*, reasonableness is the applicable standard of review of the General Division decision.

## **The Tribunal's jurisdiction or ability to grant the Appellant relief**

[14] With regard to the question of the Tribunal's jurisdiction or ability to grant the Appellant the relief she seeks, the Tribunal lacks the requisite authority to do so. While CPP section 82 expressly grants the Tribunal the ability to hear appeals from a reconsideration

decision of the Respondent Minister,<sup>4</sup> the Tribunal can exercise only such jurisdiction as its governing statute permits. In *Conway*,<sup>5</sup> the S.C.C. made it clear that a tribunal can grant only such remedies as it is empowered by its enabling statute to provide. Abella, J., writing for the S.C.C. , after finding that the Ontario Review Board (“the Board”), was a court of competent jurisdiction for the purposes of granting remedies under Section 24 of the *Canadian Charter of Rights and Freedoms* denied Mr. Conway the remedies he was seeking. Abella, J. concluded that,

[101] A finding that the Board is entitled to grant Mr. Conway an absolute discharge despite its conclusion that he is a significant threat to public safety, or to direct CAMH to provide him with a particular treatment, would be a clear contradiction of Parliament’s intent. Given the statutory scheme and the constitutional considerations, the Board cannot grant these remedies to Mr. Conway.

[15] In *Canada (Attorney General) v. Lise Vinet-Proulx*, T-200-06, 2007 FC 99, the Federal Court delineated the jurisdiction of the Review Tribunal in the context of decisions of the Minister made under section 27.1(2) of the *Old Age Security Act, OAS Act, R.S.C. 1985, c. 0-9*. Where the application for pension benefits was received in April 2004 and the legislation limited retroactivity to one year<sup>6</sup>, Martineau, J. stated at paragraph 13 that “a Review Tribunal did not have jurisdiction to award pension benefits retroactively from the month of July 2002, as this

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<sup>4</sup> 4 82. Appeal to Social Security Tribunal – A party who is dissatisfied with a decision of the Minister made under section 81, including a decision in relation to further time to make a request, or, subject to the regulations, any person on their behalf, may appeal the decision to the Social Security Tribunal established under section 44 of the *Department of Employment and Social Development Act*.

<sup>5</sup> *R. v. Conway*, 2010 SCC 22

<sup>6</sup> **Payment of Pension**

**8. Commencement of pension** – (1) Payment of pension to any person shall commence in the first month after the application therefor has been approved, but where an application is approved after the last day of the month in which it was received, the approval may be effective as of such earlier date, not prior to the day on which the application was received, as may be prescribed by regulation.

(2) *Exception* - Notwithstanding subsection (1), where a person who has applied to receive a pension attained the age of sixty-five years before the day on which the application was received, the approval of the application may be effective as of such earlier day, not before the later of

(a) ) a day one year before the day on which the application was received, and

(b) ) the day on which the applicant attained the age of sixty-five years as may be prescribed by regulation.  
*OAS Act, R.S.C. 1985, c. 0-9, para. 8(1) and (2) a).*

was contrary to the legislative and regulatory provisions on which the Minister's initial decision and revised decision are based."

[16] CPP subsection 67(3) contains a similar one-year limitation, where the applicant for a retirement pension was already sixty-five years old when they made the pension application. Thus, applying the logic of *Vinet-Proulx*, the General Division does not have jurisdiction to award retirement pension benefits to the Appellant from the month of October 2002.

### **The Decision to Summarily Dismiss the Appeal**

[17] The General Division has express jurisdiction to summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success. The Federal Court of Appeal has equated a reasonable chance of success to an arguable case: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63. The question of what is the applicable test in determining whether or not an appeal has a reasonable chance of success or an arguable case in the context of the Tribunal may well be open, nonetheless, I am of the view that where the facts are not in dispute; the applicable law is clear; and where on the undisputed facts and law only one, clear decision can be made and that decision is not in an appellant's favour; then that test has not been met. This is the case here and, thus, the General Division decision to dismiss the appeal summarily is entirely appropriate.

[18] In the instant case, the facts are not in dispute. The Appellant turned sixty-five years old on October 24, 2002. She did not apply for a CPP retirement pension at that time. The Appellant applied for the pension ten years later when she was seventy-five years old. The pension initially commenced in December 2012, however, on reconsideration the Respondent amended the commencement date to November 2011. CPP subsection 67(3)(a) is the applicable statutory provision. This provision limits retroactivity in cases where the application for a retirement pension is made after an applicant turns sixty-five years of age to twelve months. The Appellant having made the application for a retirement pension long after she turned sixty-five years old is, unfortunately, caught by the terms of the statute, from which the Tribunal has no jurisdiction to deviate. Accordingly, her appeal must be dismissed.

## **CONCLUSION**

[19] The Appeal is dismissed.

*Hazelyn Ross*

Member, Appeal Division