



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. K. v Minister of Employment and Social Development*, 2019 SST 92

Tribunal File Number: AD-19-72

BETWEEN:

P. K.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: February 7, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] P. K. (Claimant) turned 65 in February 2016. In December 2017, he applied for a Canada Pension Plan retirement pension. The Minister of Employment and Social Development (Minister) granted the application, and the Claimant began receiving payment retroactively to January 2017, which is the greatest amount of retroactivity permitted under the *Canada Pension Plan*. The Claimant appealed the Minister's decision regarding when the retirement pension payments should begin, seeking payment retroactive to February 2016, when he turned 65. The Tribunal's General Division dismissed the appeal because the Tribunal has no legal authority to grant further retroactivity. Leave to appeal this decision to the Tribunal's Appeal Division is refused because the appeal does not have a reasonable chance of success based on the General Division having failed to observe the principles of natural justice.

ISSUE

[3] Does the appeal have a reasonable chance of success because the General Division failed to observe the principles of natural justice?

ANALYSIS

[4] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal, so the Tribunal has only the legal authority that the DESD Act has given to it. The only grounds of appeal available under the DESD Act are that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without

regard for the material before it.¹ In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.²

[5] The principles of natural justice are concerned with ensuring that parties to an appeal have the opportunity to present their case to the Tribunal, to know and answer the other party's legal case, and to have an impartial decision-maker make a decision based on the law and the facts. The Claimant argues that the General Division failed to observe these principles because it failed to consider the extenuating circumstances that prevented him from applying earlier for the pension.

[6] However, the Tribunal has no legal authority to disregard the rules for retroactivity set out in the *Canada Pension Plan* or to make a decision on any basis except those set out in the legislation. This is correctly set out in the General Division decision.³

[7] The facts are not in dispute, and no important information was misstated or overlooked. The General Division correctly set out the law and applied it to the facts before it. There is no suggestion that the Claimant could not present his case to the Tribunal or meet the case against him. The Claimant specifically states that the General Division was not biased. Applying the law to the facts in this case may seem unfair, but this is not a basis on which the appeal has a reasonable chance of success.

CONCLUSION

[8] The application is refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	P. K., self-represented
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¹ DESD Act, s 58(1).

² DESD Act, s 58(2).

³ General Division decision at para 4.