



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. F. v Minister of Employment and Social Development*, 2019 SST 345

Tribunal File Number: AD-18-808

BETWEEN:

J. F.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: April 12, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] J. F. (Claimant) applied for and began to receive a Canada Pension Plan retirement pension. She later applied for a Canada Pension Plan survivor's benefit. The Minister of Employment and Social Development granted this application and began to pay the Claimant a combined amount for the retirement pension and survivor's benefit.

[3] The Claimant appealed the Minister's decision regarding the amount she received to the Tribunal, seeking credit for the fact that her late husband did not apply for the Old Age Security pension (OAS) until approximately ten years after he was first entitled to receive it. The Tribunal's General Division summarily dismissed the appeal because it decided that the appeal had no reasonable chance of success. The Claimant's appeal from this decision is dismissed because the General Division observed the principles of natural justice.

PRELIMINARY MATTERS

[4] This appeal was decided on the basis of the documents filed with the Tribunal after considering the following:

- The legal issue to be decided is straightforward
- The parties filed written submissions on the legal issue
- The parties attended a pre-hearing conference, and filed further written submissions after this conference
- The *Social Security Tribunal Regulations* requires that proceedings be concluded as quickly as the circumstances and considerations of fairness and natural justice permit.¹

¹ Social Security Tribunal Regulations s. 3(1)

ISSUE

[5] Did the General Division fail to observe a principle of natural justice because the Claimant's late husband did not receive timely information to apply for OAS?

ANALYSIS

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that the Appeal Division can consider. They 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.² The Claimant argues that the General Division failed to observe a principle of natural justice. This is examined below.

[7] The principles of natural justice are concerned with procedure, not the outcome of an appeal. They 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 a decision made by an impartial decision maker based on the law and the facts. The Claimant argues that these principles were breached because her late husband resided outside of Canada for a period of time and so did not receive any notice to apply for OAS, and did not have access to free legal advice that may have been available had he been in Canada. As a result, he did not apply for OAS until approximately ten years after he would have first qualified to receive it. The Claimant therefore requests that she be paid a lump sum equivalent to what her late husband would have received if he had applied for OAS when he first qualified for it.

[8] I am sympathetic to the Claimant's circumstances. However, the alleged wrongs that the Claimant points to were not committed by the General Division. There is no suggestion that the General Division prevented the Claimant from presenting her case to the Tribunal. The Claimant was given 30 days to make submissions regarding the General Division's intent to summarily dismiss her appeal. She made submissions during this time.³ The Claimant has not said what

² DESD Act s. 58(1)

³ GD4, GD5

arguments or evidence she was prevented from presenting to the General Division. There is no suggestion that she did not know or understand the Minister's position on the legal issue that the General Division had to decide, being whether the amount of combined benefit she received was correct.

[9] The Claimant also argues that the process for her husband to apply for OAS was biased because he resided outside of Canada, and so received no notice about the pension and did not have access to free legal advice or representation. This may be so. However, the Tribunal has no jurisdiction over or involvement in the process by which a claimant initially applies for OAS. Therefore, the Appeal Division cannot intervene if any error was made during this process.

[10] I have read the General Division decision and the written record. The General Division made no error in law. It did not overlook or misconstrue any important information. It did not base its decision on an erroneous finding of fact.

CONCLUSION

[11] The appeal must be dismissed because the General Division did not make any error under the DESD Act.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
SUBMISSIONS:	J. F., Appellant Matthew Vens, Counsel for the Respondent