



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. S. v Minister of Employment and Social Development*, 2019 SST 1448

Tribunal File Number: GP-19-604

BETWEEN:

W. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Teleconference hearing on: November 14, 2019

Date of decision: November 15, 2019

DECISION

[1] The Minister received the Claimant's Canada Pension Plan ("CPP") retirement pension application in December 2018. This means his CPP retirement pension starts in January 2019.

OVERVIEW

[2] The Claimant's 60th birthday was on August 4, 2018. He wanted to receive his CPP retirement pension as soon as he turned 60, even though he would receive a higher monthly amount if he waited. For example, a person's monthly payment for a pension starting in October 2018 is less than the monthly payment the person would get for a pension starting in January 2019.

[3] The Minister approved the Claimant's application. However, the Minister said the Claimant's application was received on December 16, 2018. The Claimant agrees that he applied in December 2018, but says he first applied in September 2018. I must decide when the Minister received the Claimant's application. This is important because it will affect both the amount of his pension and the start date of those payments. On reconsideration, the Minister still denied receiving an application in September 2018. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

ISSUE

[4] When did the Minister receive the Claimant's application for a CPP retirement pension?

ANALYSIS

[5] The CPP contains specific rules about the payment of a CPP retirement pension. The Claimant is less than 65 years old. For an approved application of a person under age 65, the pension is payable starting on the latest of the following dates:

- (a) the month in which the applicant reaches age 60;
- (b) the month following the month in which the application was received; and,
- (c) the month chosen by the applicant in his application.¹

¹ These rules are set out in s. 67(3.1) of the *Canada Pension Plan*.

[6] The wording of this rule is very important. The payment must consider the date that the Minister receives the application. This date is not necessarily the same as the date that an applicant completes or sends the application.

[7] The two potential application dates are September 2018 and December 16, 2018. Both are after the Claimant's 60th birthday. There is no evidence that the Claimant chose to defer his CPP retirement pension. This means the start date of his CPP retirement pension depends on the month in which the Minister received the Claimant's application. If the Minister received his application in September 2018, the pension starts in October 2018. If the Minister received the Claimant's application in December 2018, the pension starts in January 2019.

When did the Minister receive the Claimant's application for a CPP retirement pension?

[8] For the reasons that follow, I find that the Minister received the Claimant's CPP pension application in December 2018. I will first set out the Minister's version of events.

The Minister's version of events

[9] The Minister supplied evidence showing that the Claimant applied online for a CPP retirement pension on December 16, 2018.² The Claimant does not dispute this. He accepts that he applied on that date, and received an online message confirming his application at that time.

[10] The Minister's online application system keeps track of when people have accessed it. The Minister provided a listing of system access by the Claimant.³ This listing shows that the Claimant accessed the system on August 7, 2018, and August 14, 2018. The Claimant said he might have tried to use the online system on those dates, although he was not successful in applying. There is no record of further access until December 16, 2018. I will now set out the Claimant's version of events.

The Claimant's version of events

² GD2-8

³ GD6-9 to GD9-15

[11] The Claimant says he also accessed the system in early September 2018, and applied for his CPP retirement pension then. He could not identify a specific application date in September 2018. He also did not recall an online message confirming his application at that time. However, at the time, he did not know that he would receive such a message.

[12] The Claimant did not hear anything for a while. He said he tried to call the Minister on several occasions starting in October 2018, but could never reach an agent. He eventually did Internet searches to find an alternate contact person. He reached that person by phone in late November 2018, but she only dealt with the pensions of federal employees. However, she told the Claimant that he did not appear to have an active application.

[13] The Claimant's wife was also about to turn 60 at this time, so he helped her apply online for the CPP retirement pension in early December. He could not successfully apply for her unless he answered "no" to the question about deducting tax from her pension. When he did that, he saw a message confirming receipt of her application. He then decided to try applying again online for his own pension. He answered "no" to the question about deducting tax from his pension. He saw a message confirming receipt of his application.

[14] When the Claimant first tried to apply in September 2018, he thinks he answered "yes" to the question about deducting tax from his pension. He believes this question caused an error in the Minister's online application system. As a result, he thinks the Minister should have received his application in September 2018 instead of December 2018.

Resolving the factual differences between the Claimant and the Minister

[15] I do not have significant concerns about the Claimant's reliability, although he admitted that he sometimes has problems with computers. While the Minister had no record of his November 2018 call, I do not attach any weight to this. It is not clear that the Claimant was speaking to a Minister's employee at that time. He called a number that he found through an Internet search. This person may have had access to some pension information, but may not have worked for the Minister. In that case, the Minister would have no record of the call.

[16] There are many possible explanations for the lack of evidence about a September 2018 application. It is possible that the Claimant confused this with something that happened in

August 2018. He may also have made a mistake, such as using the wrong SIN number. There may have been Internet issues. It is possible that his application and all records of his access were deleted from the Minister's records. An error in the tax deduction question might have caused this. It is not hard to think of other possible explanations. However, as it turns out, I do not need to determine exactly why the Minister has no record of the September 2018 application.

Applying the law to the Claimant's case

[17] Although the Claimant tried to apply online, his situation is similar to an application that was "lost in the mail". In each case, the applicant believes he has applied for a pension, because he sent a completed application. However, for some reason, the Minister does not receive the application.

[18] As noted, the issue is when the Minister received the application. The Claimant says he submitted an application in September 2018, but there is no record of this. Even if he did access the proper system and go through all of the required steps, he testified that he did not receive confirmation of a successful application. He may have submitted an application. He might even have sent it to the Minister via the Internet. However, he cannot say that the Minister received the application. The Claimant can only speak to what he did and saw himself. In this case, the only potentially reliable evidence about receiving an application has to come from the Minister.

[19] The Minister filed records that exhaustively detail the Claimant's access to the pension application system.⁴ The Claimant acknowledged that the Minister's records seemed to accurately record his access to the system in August 2018 and December 2018. However, the records do not show any system activity in September 2018. Nor was there any other documentary evidence that the Minister received an application from the Claimant in September 2018. Without such evidence, I cannot reasonably find that the Minister received the Claimant's application before December 16, 2018. As the Minister did not receive an application until December 2018, the pension cannot start until January 2019.

[20] Despite this result, I have sympathy for the Claimant. I accept that he wanted to apply for his pension before December 2018. For reasons that may have been beyond his control, he was

⁴ These are the records at GD6-9 to GD6-15.

unable to make this happen. However, the Tribunal is created by legislation. It only has the powers granted to it by its governing statute. As a Tribunal member, I have to interpret and apply the provisions as they appear in the *Canada Pension Plan*. I cannot waive or change them, even though they may seem unfair in a particular situation. Nor can I interpret the CPP's wording in an unreasonable way. I will now discuss a recent Tribunal case that looked at virtually the same issue and came to the same conclusion.

A similar Tribunal case in 2016

[21] The Tribunal made a decision in 2016 about a CPP retirement pension application that was submitted but never received (the "2016 Tribunal Case").⁵ In January 2013, the applicant went to his MP's office for help with completing his application. The MP's office was going to mail the completed application to the Minister. However, the Minister never received the January 2013 application. The applicant completed another application in April 2013: the Minister promptly received and approved it. The applicant argued that January 2013 should have been his application date. He said that, through no fault of his own, his first application was submitted but not received. This is what happened to the Claimant too.

[22] In the 2016 Tribunal Case, the applicant failed to establish an earlier start date for his pension. The Tribunal noted that the Minister must receive an application before approving it. Once the Minister approves an application, the application receipt date remains critical: the payment date must consider when the Minister received the application, rather than when the application was made. The Tribunal said the law was very clear on this issue: the Minister had no discretion to choose a pension start date that he or she might prefer.⁶ The Tribunal said it was also compelled to follow the law, and could not use its discretion to pick a different start date.

[23] The 2016 Tribunal Case added that people did not have to apply in person. Mailed applications were validly made and received on a regular basis. However, an applicant who chose to apply by mail accepted a very small and but known risk that his documents could be inexplicably lost. The risk could be minimized, but it was one that people regularly accepted. In

⁵ *S. M. v. Minister of Employment and Social Development*, 2016 SSTGDIS 11

⁶ *S. M. v. Minister of Employment and Social Development*, 2016 SSTGDIS 11; applying s. 67(3.1)(b) of the *Canada Pension Plan*

my view, the same principle would apply to applications submitted online, especially when there is no receipt confirmation.

[24] I see little difference between the issues and reasoning in this case and the issues and reasoning in the 2016 Tribunal Case. While other Tribunal decisions are persuasive, they are not binding. However, the core reasoning of the 2016 Tribunal Case decision was based on a 2007 ruling of the Federal Court of Canada (the “Federal Court Case”).⁷ Decisions of the Federal Court are binding on the Tribunal.

[25] Before concluding, I will briefly address a related issue that the Federal Court considered.

Asking for an exercise of ministerial discretion

[26] The applicant in the Federal Court Case was also unsuccessful. The court said that the unsuccessful applicant might consider applying to the Minister for “an exercise of ministerial discretion”. This could allow a change in the payment start date, if the Minister gave erroneous advice or made an administrative error that affected a benefit.⁸ However, the Tribunal does not have the authority to investigate and decide whether an application was lost due to an administrative error. Only the Minister can do that. If the Claimant takes this route, and is unhappy with the Minister’s decision, the Tribunal still cannot help him. The Claimant must then appeal to the Federal Court of Canada.⁹

CONCLUSION

[27] The appeal is dismissed.

Pierre Vanderhout
Member, General Division - Income Security

⁷ *Canada (A.G.) v. Vinet-Proulx*, 2007 FC 99.

⁸ This is set out in subsection 66(4) of the Canada Pension Plan.

⁹ *Canada (A.G.) v. Vinet-Proulx*, 2007 FC 99, and *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278. See also *S. M. v. Minister of Employment and Social Development*, 2016 SSTGDIS 11.