



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CE v Minister of Employment and Social Development*, 2021 SST 36

Tribunal File Number: AD-21-10

BETWEEN:

C. E.

Applicant / Claimant

and

Minister of Employment and Social Development

Respondent / Minister

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: February 4, 2021

DECISION AND REASONS

DECISION

[1] The Application to the Appeal Division is refused because the appeal does not have a reasonable chance of success.

OVERVIEW

[2] The Applicant / Claimant C. E. is seeking leave to appeal the General Division's decision. This is another way of saying that applicants have to get permission from the Appeal Division before they can move on to the next stage of the appeal process. Applicants have to show that the appeal has a reasonable chance of success. This is the same thing as having an arguable case at law.¹ If the appeal does not have a reasonable chance of success, that ends the appeal process.

[3] The General Division found that the Respondent, the Minister of Employment and Social Development, had correctly calculated the Claimant's monthly Canada Pension Plan retirement benefit.

[4] The Claimant disputes the General Division's calculation. He maintains that he is entitled to a larger monthly benefit. He argues that the General Division made mistakes. In particular, he argues that the process before the General Division was unfair. He also argues that the General Division overlooked an important fact, namely, that he had asked the Minister to start paying him his retirement pension at age 65.

[5] I have to decide whether the appeal has a reasonable chance of success. I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am refusing leave to appeal.

ISSUES

[6] The issues are:

¹ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

1. Is there an arguable case that the process before the General Division was unfair or that the member was biased?
2. Is there an arguable case that the General Division member overlooked the Claimant's request that his retirement pension should start at age 65?
3. Is there an arguable case that the General Division miscalculated the Claimant's monthly retirement pension?

ANALYSIS

[7] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that the General Division committed the type of error that is set out in section 58(1) of the *Department of Employment and Social Development Act* (DESDA). These errors would be where the General Division:

- (a) Failed to provide a fair process;
- (b) Failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- (c) Made an error of law; or
- (d) Based its decision on an important factual error (perverse, capricious, or without regard for the evidence).

[8] Of these, the Claimant argues that the process was unfair. He also argues that the General Division made a factual mistake. I will review each of these claims to determine whether the Claimant has an arguable case.

1. Is there an arguable case that the process before the General Division was unfair or that the member was biased?

[9] No. I am not satisfied that there is an arguable case that the process at the General Division was unfair or that the member was biased.

[10] The Claimant argues that the process at the General Division was unfair. He argues that the member was unfair because she preferred the Minister's arguments and evidence to his. This was despite the fact that the Minister failed to appear for the hearing. He argues that the General Division should have necessarily accepted his evidence and arguments over those of the Minister.

[11] The Claimant notes that he had prepared several questions to ask the Minister.² But, because no one appeared for the Minister, he obviously did not receive any responses to his questions. The Claimant maintains that the Minister never provided any facts or evidence to prove that there was a mistake in the original calculation of his monthly pension, even if it was based on an incorrect birthdate. He claims that the original calculation leads to the same monthly retirement benefit amount as a calculation based on the correct birthdate.

[12] The Claimant has characterized his arguments as a matter of procedural fairness. But, procedural fairness usually means whether a claimant received a fair hearing. For instance, did a claimant get adequate notice of the hearing? Were they given full and proper disclosure? Did they know the case against them, or did they get a chance to present their case?

[13] I do not see any evidence that suggests the Claimant did not have adequate notice of the hearing, or that he did not get proper disclosure of documents. I also do not see any evidence to suggest that there were any issues with the way the General Division member conducted the hearing. For that matter, I do not see any issues either with any other procedures that affected the Claimant's right to be heard or to answer the case against him.

[14] Rather, the Claimant seems to be suggesting that the General Division member was biased against him because she decided in the Minister's favour. But, the General Division member was entitled to make findings of fact based on the evidence before her. She was entitled to accept the Minister's arguments and any evidence it presented, even if no one appeared for the Minister at the General Division hearing.

[15] As an administrative decision-maker, the General Division does not have to adhere to the strict rules of evidence. It can accept evidence in any manner it chooses, even evidence that

² Claimant's submissions dated August 2, 2020, at GD23.

might not have been admissible in a court of law. So, it was open to the member to accept the Minister's evidence.

[16] That said, the General Division member explained how she arrived at her decision. While she came to the same conclusion as the Minister did, she examined the applicable legislation. She referred to sections of the *Canada Pension Plan* that set out the calculation for the monthly pension.

[17] The General Division member performed her own calculation of the monthly retirement benefit. The member did not rubber-stamp the Minister's arguments or accept its calculation without any scrutiny.

[18] I am not satisfied that there is an arguable case that the process before the General Division was unfair or that the member was biased.

2. Is there an arguable case that the General Division member overlooked the Claimant's request that his retirement pension should start at age 65?

[19] No. I find that the Claimant does not have an arguable case on this point.

[20] The Claimant argues that the General Division member made an erroneous finding of fact at paragraph 5 of her decision. There, the General Division member wrote that the Claimant requested "his retirement pension commence the month after he turned 65, which would be May 2017."

[21] The Claimant denies that he asked his pension to start May 2017. He claims that he asked his pension to start "at the age of 65." The Claimant turned 65 on April X, 1952. The Claimant notes that he did not mention either May or 2017 in his application form.

[22] The application form shows that when the Claimant applied for a retirement pension in March 2017, he asked that his pension start "at the age of 65." The application form stated that his pension would start the month after his 65th birthday.³

³ Claimant's Application for a Canada Pension Plan Retirement Pension, filed March 23, 2017, at GD2-12 at box 10.

[23] It is true that the Claimant did not specify either May or 2017. But, by selecting “at the age of 65,” effectively this meant that his retirement pension would start in May 2017 because that is the month after his 65th birthday. The application form clearly stated that that is when the retirement pension would start.

[24] The General Division did not make an erroneous finding. The member accurately set out the evidence when she wrote, “He requested that his retirement pension commence the month after he turned 65.” This is consistent with what appeared on the Claimant’s application form. And, when the member wrote, “which would be May 2017,” she was simply pointing out what “the month after he turned 65” meant.

[25] I am not satisfied that there is an arguable case that the General Division member made an erroneous finding of fact on this point.

3. Is there an arguable case that the General Division member miscalculated the Claimant’s monthly retirement pension?

[26] No. I find that the Claimant does not have an arguable case on this point.

[27] The Claimant argues that the General Division miscalculated his monthly retirement pension. He argues that the original calculation, based on an incorrect birthdate, is correct. Ultimately, he claims that the monthly retirement pension is the same, regardless of whether the Minister used his actual or an incorrect birthdate of March X, 1952 for its calculation, since he asked for payment to begin at age 65.

[28] So, the Claimant argues that the General Division made an error at paragraphs 22 and 23 of its decision. The General Division stated that the original calculation of the Claimant’s monthly retirement pension was incorrect.

[29] When the Claimant applied for a Canada Pension Plan retirement pension, he provided his birthdate of April X, 1952.⁴ The Minister mistakenly inverted the month and date of the Claimant’s birthdate. It calculated the Claimant’s monthly pension using an incorrect birthdate of

⁴ Claimant’s Application for a Canada Pension Plan Retirement Pension, filed March 23, 2017, at GD2-11.

March X, 1952. Once the Minister recognized the error in the Claimant's birthdate, it recalculated his monthly pension. This resulted in a lower monthly pension.

[30] The Claimant argues that it does not matter what birthdate the Minister or General Division used to calculate his monthly retirement pension. The parties agree that the same calculation applies. However, the result of the monthly benefit amount differs depending upon when payment of the pension is to start. The start date determines whether and how much of an actuarial adjustment applies.

[31] The Claimant argues that the General Division mistakenly assumed that the Minister accepted a payment start date of May 2017 and that, as a result, that it made an actuarial adjustment when it first calculated the monthly pension using the incorrect birthdate. The Claimant acknowledges that there would have been an actuarial adjustment—upwards of 0.7% for each month that the retirement pension commences after age 65—if his birthdate had been March 1952 (rather than April 1952) AND if he had asked for payments to start in May 2017. Under that scenario, payments would have started a full month after his 65th birthday.

[32] However, the Claimant denies that the Minister ever made any actuarial adjustments, even when it thought his birthdate was March X, 1952. He argues that the Minister never made any actuarial adjustments because he had always asked for payments to start at age 65. He denies that he ever asked to have his retirement pension start in May 2017.

[33] However, the Minister's submissions indicate that it calculated the Claimant's monthly pension with a payment start date of May 1, 2017.⁵ The Claimant disputes this fact and claims there is no evidence to support the Minister's submissions that payment started in May 2017. Yet, I notice that the Claimant's submissions of June 21, 2020, confirm that he received his first payment in May 2017.⁶

[34] The Claimant has not referred me to any evidence to show that the Minister started paying him a retirement pension effective April 2017.

⁵ Submissions of the Minister, filed May 19, 2020, at GD10-3.

⁶ Claimant's submissions filed on June 20, 2020, at GD18-3.

[35] Both the Minister and the General Division calculated the Claimant's monthly retirement pension based on his correct birthdate and payment starting at age 65 (with payment starting the month after his 65th birthdate). Once it did that, then it should have become apparent that the original calculation incorrectly included an actuarial adjustment.

[36] To put it more simply, the original calculation was based on an incorrect birthdate. Once the calculation used the correct birthdate, it should have yielded the same monthly pension amount (given that all other variables remained unchanged). But, the difference in the monthly pension between the original and current calculation lies in the fact that the Minister used the same payment start date of May 2017 in both calculations. With an incorrect birthdate of March 1952, it appeared to the Minister that the Claimant would be starting the retirement pension one full month later, in May 2017. Hence, the mistake over the birthdate led the Minister to adjust the retirement pension upwards by a factor of 0.7% in the original calculation.

[37] I am not satisfied that there is an arguable case that the General Division miscalculated the amount of the monthly retirement pension. There was no reason why the General Division should have accepted the Minister's original calculation. The Minister used a payment date of May 2017 and applied an actuarial adjustment of 0.7%. But, that was based on an incorrect birthdate. Once the Minister recognized that it had used an incorrect birthdate, it corrected the actuarial adjustment. An upwards adjustment was not available in the Claimant's case because payment started the month after the Claimant's 65th birthday—not two months later.

[38] Other than the issue over the actuarial adjustment, the Claimant does not otherwise dispute the General Division's calculations of the monthly retirement pension. I do not see any error or miscalculation in the monthly pension.

CONCLUSION

[39] I am not satisfied that the appeal has a reasonable chance of success. The Application to the Appeal Division is refused.

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	C. E., Self-represented
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