



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v GC*, 2021 SST 301

Tribunal File Number: AD-21-87

BETWEEN:

Minister of Employment and Social Development

Appellant

and

G. C.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: June 24, 2021

DECISION AND REASONS

DECISION

[1] The appeal is allowed. The General Division exceeded its jurisdiction (went beyond its powers) when it granted the Respondent, G. C., additional retroactive Canada Pension Plan (CPP) retirement pension payments.

[2] I am substituting my decision for the General Division's and confirming the Minister's decision to start G. C.'s pension as of April 2020.

OVERVIEW

[3] The Minister is appealing a decision of the Social Security Tribunal's General Division to start G. C.'s CPP retirement pension as of January 2020.

[4] G. C.'s completed an application for a CPP retirement pension on December 3, 2019. He says that, the next day, he had a friend mail the application to Service Canada from a post office in X, Nova Scotia.

[5] Service Canada did not stamp the application as received until March 16, 2020. The Minister started paying G. C.'s pension as of April 2020—one month after the application date, as required by law.

[6] G. C. thought that his payments should have started sooner. He was sure that Service Canada must have received his application earlier than what the date stamp showed. The Minister insisted that Service Canada received the application in March 2020, and it refused to change the start date.

[7] G. C. appealed the Minister's refusal to the General Division. The General Division allowed G. C.'s appeal, finding it, more likely than not, that his application was mailed on December 4, 2019 and received within 10 business days. In coming to this conclusion, the General Division placed weight on evidence from G. C.'s friend, who said that she recalled handing the application to a post office employee.

[8] The Minister then asked the Appeal Division for permission to appeal the General Division's decision. The Minister argues that the General Division lacked the power to decide whether the Minister made an administrative error in handling G. C.'s application.

[9] Late last year, I granted the Minister leave to appeal because I thought it had raised an arguable case. Now, having reviewed the record and heard the parties' oral arguments, I have concluded that the General Division's decision cannot stand.

ISSUES

[10] There are four grounds of appeal to the Appeal Division.¹ The party seeking to appeal must show that the General Division

- (i) did not follow procedural fairness;
- (ii) exceeded or refused to exercise its jurisdiction;
- (iii) made an error of law; or
- (iv) based its decision on an important factual error.

[11] In this appeal, I had to answer the following questions:

- Did the General Division find that the Minister made an error? If so, what kind of error was it?
- If the Minister committed an administrative error, did the General Division have the power to move G. C.'s pension start date from April to January 2020?

ANALYSIS

Did the General Division find that the Minister made an error?

[12] G. C. alleges that the Minister mishandled his pension application. He says that he had a friend mail it for him on December 4, 2019 and that Canada Post presumably delivered it to its destination within 10 days. He argues that, if Service Canada did not stamp the application until

¹ *Department of Employment and Social Development Act* (DESDA), s 58(1).

March 16, 2020, that means it must have lain unprocessed in its facility for more than three months.

[13] The Minister says that it investigated the matter and found no evidence of error. It maintains that the application did not arrive at its facility until March 2020.

[14] As a member of the Appeal Division, I have no mandate to make a finding about whether Minister in fact mishandled the application. But I can look at how the General Division considered that question and whether it did so properly.

[15] The General Division's decision does not contain the word "error," but it clearly convicts the Minister of mislaying G. C.'s application. The General Division

- accepted that the Claimant's friend mailed the application on December 4, 2019;
- assumed that the application must have been delivered to Service Canada on or before December 16, 2019; and
- examined Service Canada's mail processing procedures and found that it was rare for mail not to be opened, sorted, and routed on the day of delivery.

[16] On that last point, the General Division commented, "This sounds like a careful procedure. But it is not fool-proof. That is why Service Canada also has a process for locating lost items."² It went on to find that, more likely than not, Service Canada had misplaced the application:

[C]ommon sense tells me that in any organization that receives large volumes of mail, some is bound to go missing. That includes Service Canada. Unopened or unstamped mail can be lost in the mailroom. An application can occasionally go astray, be found three months later, and then be processed as if it was just received.

I think that is most likely what happened here.³

[17] In effect, the General Division found that the Minister committed an error. And the error that it identified was an administrative error, not a substantive error. The error did not affect the Claimant's substantive rights or his entitlement to the retirement pension. But it caused him to

² General Division decision, para 16.

³ General Division decision, paras 17 and 18.

receive fewer payments than he would have received if Service Canada had processed his application properly.

Did the General Division have the power to move G. C.'s start date?

[18] Although the General Division found that the Minister made an error in handling G. C.'s application, it had no authority to do anything about it. By ordering the pension start date to be moved up three months, the General Division exceeded its jurisdiction. I come to this conclusion for two reasons.

The General Division is barred from considering the Minister's administrative errors

[19] The Minister denies that it received G. C.'s application any earlier than what the date stamp showed. However, the Minister argues that, even if it did mishandle G. C.'s application, the General Division had no power to force it to correct its mistake.

[20] Section 66(4) of the *Canada Pension Plan* allows the Minister to correct administrative errors:

Where the Minister **is satisfied** that, as a result of erroneous advice or administrative error in the administration of this Act, any person has been denied

- (a) a benefit, or portion thereof, to which that person would have been entitled to under this Act

[...]

the Minister shall take **such remedial action as the Minister considers appropriate** to place the person in the position that the person would be in had the erroneous advice not been given or the administrative error not been made.

This provision contains language, highlighted above, suggesting that the Minister's power to address its own administrative errors is discretionary or voluntary. That means that the Minister can take corrective action if it wants to, but it doesn't necessarily have to.

[21] The Courts have said that non-judicial decision-makers such as the Social Security Tribunal can only exercise such powers as are given to it by statute. In a case called *Pincombe*,⁴

⁴ *Pincombe v Canada (Attorney General)*, [1995] FCJ No. 1320 (FCA).

the Federal Court of Appeal determined that the Review Committee (a predecessor of the General Division) could not entertain an appeal of a Ministerial decision made under a previous version of section 66(4).⁵ The Court looked at the Review Committee's powers under sections 81 and 82 of the *Canada Pension Plan*, and determined that they did not apply to a decision made under section 66(4).

[22] More than 25 years after *Pincombe*, these provisions remain essentially unchanged. Section 81 of the *Canada Pension Plan* says that a dissatisfied claimant may ask the Minister to reconsider a decision, but only if that decision falls under one of five listed categories. Section 82, in turn, limits the Tribunal to considering decisions made under section 81.

[23] *Pincombe* determined that section 81 did not include a Ministerial decision made under section 66(4). That analysis was confirmed by subsequent cases, including one called *Tucker*,⁶ which specifically considered whether “erroneous advice or administrative error” might be the subject of section 81(1)(c). That section provides recourse where “a beneficiary is dissatisfied with any determination as to the **amount of any benefit** payable to him or as to his eligibility to receive that benefit [emphasis added]”

[24] *Tucker* was a case that involved Old Age Security (OAS) pension payments forgone because of Service Canada's erroneous advice. Even so, it is applicable to G. C.'s appeal because the *Old Age Security Act* contains jurisdictional and Ministerial remediation provisions that mirror the *Canada Pension Plan*'s. In *Tucker*, the Federal Court of Appeal wrote:

Decisions as to the forgiveness of an overpayment (or the repayment of an underpayment) made as a result of erroneous advice are simply not decisions “respecting the **amount of any benefit** that may be paid to that person” within the meaning of subsection 27.1(1) [the equivalent of the *Canada Pension Plan*'s section 81(1)(c)]. The Act (just like the Plan at the relevant time in *Pincombe*) provides no other specific right of appeal of such a decision [emphasis added].⁷

⁵ The Minister's power to take remedial action was formerly set out in s 65(4) of the *Canada Pension Plan*. That section, with minor changes in wording, is now numbered as 66(4).

⁶ *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.

⁷ *Tucker*, para 11.

[25] *Pincombe, Tucker*, and other cases⁸ are clear. Under its governing legislation, the Tribunal has no jurisdiction over Ministerial decisions made under section 66(4) of the *Canada Pension Plan*. Since I am bound to follow Federal Court and Federal Court of Appeal cases, I have no choice but to find that the General Division exceeded its authority when it considered an appeal of the Minister's refusal to take remedial action for an administrative error.

Administrative tribunals have no equitable power

[26] The Minister refused to take remedial action because it denied that it made an administrative error. That decision, whether right or wrong, is discretionary and therefore beyond the jurisdiction of either the General Division or the Appeal Division. The General Division may have believed that G. C. deserved three additional months of pension payments, but it didn't have the power to disregard the law and give him what he wanted.

[27] In a case called *Esler*,⁹ the Federal Court reversed an attempt by the Review Tribunal (another predecessor of the General Division) to extend retroactive OAS benefits beyond the legislative limitation. The Court wrote, "The Review Tribunal is a pure creature of statute and as such, has no inherent equitable jurisdiction which would allow it to ignore the clear legislative provision [...] and use the principle of fairness to grant retroactive benefits in excess of the statutory limit."

[28] In this case, the General Division was bound to follow the law as written and so am I. As Tribunal members, we cannot simply ignore the terms of the *Canada Pension Plan* and impose a solution that we happen to think is fair.

⁸ *Canada (Attorney General) v Vinet-Proulx*, 2007 FC 99; *Kissoon v Canada (Minister of Human Resources Development Canada)*, 2004 FCA 384.; *Canada (Minister of Human Resources Development) v Mitchell*, 2004 FC 437.

⁹ *Canada (Minister of Human Resources Development) v Esler*, 2004 FC 1567.

REMEDY

There are two ways to fix the General Division's error

[29] The Appeal Division has the authority to address the General Division's errors.¹⁰ I can refer this matter back to the General Division for reconsideration or give the decision that the General Division should have given.

[30] The Tribunal is required to conduct proceedings as quickly and fairly as circumstances allow. It has been 18 months since G. C. applied for the retirement pension. Returning this matter to the General Division would only delay final resolution of what is becoming a drawn-out proceeding.

[31] The parties agreed that, if I were to find an error in the General Division's decision, the appropriate remedy would be for me to give the decision that the General Division should have given. Of course, the parties had different views about what the result should be. The Minister insisted that the law gave me no alternative but to renounce jurisdiction and confirm its determination of the start date. G. C. argued that, whatever the General Division's errors, his retirement pension should still start as of April 2020.

The record is complete

[32] I am satisfied that I have enough information to decide the merits of this matter myself. Both parties had adequate opportunity to make their respective cases at the General Division. Since this appeal revolves entirely around issues of law and jurisdiction, no facts are at issue. Whether the General the Minister actually mishandled G. C.'s application is, in the end, irrelevant, because it never had authority to make a ruling on an administrative error.

[33] As a result, I am in a position to give the decision that the General Division should have given. In my view, if the General Division had applied sections 66(4), 81, and 82 of the *Canada*

¹⁰ DESDA, s 59(1).

Pension Plan, then it would have realized that it had no jurisdiction to change the start date of G. C.'s pension.

CONCLUSION

[34] I am allowing this appeal. The General Division went beyond its jurisdiction by (i) finding that the Minister received G. C.'s retirement pension application in December 2019; (ii) finding that the Minister then misplaced the application for three months; and (iii) ordering the Minister to change the pension's start date to January 2020. My own assessment of the record convinces me that the Minister's original decision to start the pension in April 2020 must stand.



Member, Appeal Division

HEARD ON:	June 4, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	Attila Hadjirezaie, Representative for the Appellant G. C., Respondent