



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MK v Minister of Employment and Social Development*, 2021 SST 228

Tribunal File Number: AD-21-114

BETWEEN:

M. K.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Kate Sellar

DATE OF DECISION: June 1, 2021

DECISION AND REASONS

DECISION

[1] I am dismissing the Claimant's appeal. The General Division did not make an error by summarily dismissing the appeal. These reasons explain how I reached that conclusion.

OVERVIEW

[2] M. K. (the Claimant) was 66 years old when the Minister received her application for the *Canada Pension Plan* (CPP) retirement pension in December 2019.¹ The Minister approved the application with a payment start date of January 2019.² The Claimant appealed that decision to this Tribunal. The Claimant wanted the General Division to decide that the payment start date was August 2018.

[3] The General Division summarily dismissed the Claimant's appeal. That means the General Division gave the Claimant time to make her arguments in writing, and then decided the case without holding any further hearing because the appeal had no reasonable chance of success.

[4] The Claimant appealed the General Division's decision to the Appeal Division. I must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) by summarily dismissing the appeal.

[5] I find that the General Division did not make an error by summarily dismissing the appeal. The arguments the Claimant has raised about problems with the General Division decision do not amount to an error under the DESDA.

[6] The Claimant's appeal to change the date her payments started had no reasonable chance of success. I am dismissing the Claimant's appeal.

ISSUES

[7] The issues are:

¹ GD2-17.

² GD2-16.

1. Did the General Division make an error by summarily dismissing the Claimant's appeal?
2. Has the Claimant raised any other argument for an error by the General Division?

ANALYSIS

Reviewing General Division Decisions

[8] The Appeal Division does not give the Claimant and the Minister a chance to re-argue the case from the beginning. Instead, the Appeal Division reviews the General Division's decision to decide if it contains errors. That review is based on the wording of the DESDA.

[9] The DESDA describes three types of errors that the Appeal Division can address: errors of fact, errors of law, and errors made because the General Division did not provide a fair process (or made an error relating to the powers that it has).³

Summary Dismissal

[10] The General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.⁴ The issue is whether it is plain and obvious on the record that the appeal is bound to fail.

[11] The question is **not** whether the Tribunal must dismiss the appeal after considering the facts, the case law, and the parties' arguments. Instead, the question is whether the appeal is destined to fail regardless of the evidence or arguments that the claimant might provide at a hearing.⁵

No error by summarily dismissing the appeal

[12] The General Division did not make an error under the DESDA by summarily dismissing the Claimant's appeal. The General Division applied the facts to the law, and the Claimant's appeal was bound to fail.

³ DESDA, s 58(1).

⁴ DESDA, s 53(1); see also the Federal Court's decision in *Miter v Canada (Attorney General)*, 2017 FC 262.

⁵ The Tribunal explained this in a case called *AZ v Minister of Employment and Social Development*, 2018 SST 298.

[13] The Claimant turned 65 in July 2018. She applied for the CPP retirement pension in December 2019. The Minister approved her application with a payment start date of January 2019. This is the earliest date the CPP, under the law, allows for the payment in this situation, where the Claimant was over 65 when she applied.⁶

[14] I can understand why the Claimant would prefer to collect her CPP retirement pension starting the month after her 65th birthday (August 2018). She plans to work until she is 70. She wants to use CPP retirement pension payments to contribute to her RRSP. She has contributed to the CPP her entire working life. The global pandemic means that these are difficult and stressful times.⁷

[15] However, in my view, the Claimant's appeal was bound to fail. The General Division recognized this and summarily dismissed the appeal. There is no legal path that the General Division could have followed the ends with the Claimant collecting the retirement pension starting in August 2018.

[16] The General Division had no choice but to follow the CPP law, and that law states that the earliest that the Claimant could receive the retirement pension, based on when she applied, was January 2019.⁸ The Claimant applied for the CPP retirement pension after she turned 65. In the Claimant's situation, the law only allows for retroactive payments back 11 months, and not more.

[17] I have the power to identify and correct errors the General Division makes. The General Division did not make an error by summarily dismissing the appeal. This is not the result that the Claimant was hoping for, but the law does not allow for the change the Claimant wanted to make to her retirement pension payment start date.

⁶ Section 67(3.1)(c) of the CPP means when a claimant has reached 65 years of age, payment starts 11 months before the application.

⁷ GD2-13, GD5.

⁸ *Canada Pension Plan*, s 67(3.1)(c).

Claimant's arguments do not show an error by the General Division

[18] The Claimant argues more specifically that the General Division failed to provide her with a fair process because she did not get a hearing, even though at one point it seemed that there would be one.

[19] When she appealed, the Claimant asked for an in-person hearing at the General Division. The Claimant received a letter from the Tribunal stating that the appeal would move forward on December 18, 2020, and that the Tribunal would try to schedule the hearing during the week of January 4, 2021. The Claimant expected she would have a hearing.

[20] However, the Tribunal sent the Claimant another letter in February 2021. The letter said that a Tribunal member had reviewed her file and was considering summarily dismissing the appeal. The letter told the Claimant that if she did not want her appeal to be summarily dismissed, she should explain why in writing. If the Tribunal did not receive her written explanation by March 18, 2021, the Tribunal would “make a decision based on the information already on file.”⁹

[21] The Claimant responded in writing: she did not understand why she was not getting the January hearing the Tribunal first told her about. She explained why she disagreed that her file should be dismissed.¹⁰

[22] The Claimant argues that because the General Division did not give her a fair process, the General Division made an error. She argues I should allow her appeal of the General Division decision.

[23] I understand why the Claimant was confused. The letter to the Claimant about a possible hearing date made the Claimant expect there would be a hearing in her case. The Tribunal wrote again to explain that her case might be summarily dismissed. However, the that second letter may not have been totally clear about what changed and why, especially given that she had already received a letter that made her expect that the next step was a hearing.

⁹ GD0

¹⁰ GD5.

[24] In my view, this confusion did not result in an error for not providing a fair process. The Claimant needed every opportunity to make her arguments about why her appeal should not be summarily dismissed, and I am satisfied that she had that chance in writing.¹¹ In any event, the Claimant's retirement pension cannot become payable on the date the Claimant wants.

[25] I reviewed the documents in the Claimant's file at the Tribunal. The General Division did not ignore or misunderstand the evidence in this case.¹² The General Division said that the Claimant "**now** realizes that she could plan better for her retirement if she receives the payments as of August 2018, the month after she turned 65."¹³ The Claimant points out that actually, she realized she could plan better for her retirement much earlier (back at the reconsideration stage before she appealed to the Tribunal).

[26] The Tribunal's use of the word "now" may not have been accurate. The Claimant realized that she should have applied earlier, and it seems she came to that realization sooner than the General Division acknowledged.

[27] However, that does not mean that the General Division made an error of fact that I can fix. An error of fact has to be the kind of error that could change the outcome of the decision.¹⁴ The Claimant wants the retirement pension to start sooner, but the appeal on that issue is bound to fail, regardless of when the Claimant came to realize what she wanted. The start date for the retirement pension is based on the CPP. The CPP explains that given the Claimant's age and the time she applied, her pension cannot start in August 2018.

[28] A final note. The Claimant has expressed concerns about technical difficulties she has had in reaching the Tribunal by phone on several occasions. This kind of temporary barrier to communication with the Tribunal does not amount to an error of fair process. I am satisfied

¹¹ What fairness requires will depend on the context. The Supreme Court made that clear in a case called *Baker v Canada (Minister of Citizenship and Immigration)*, 2 SCR 817 (SCC). The Federal Court has explained that to have a fair process, people need a full and fair opportunity to make arguments on every fact or factor relevant to the case: *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319.

¹² This is the kind of review the Federal Court mentions for the Appeal Division in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

¹³ General Division decision, para 7. I've added the emphasis on the word "now."

¹⁴ Section 58(1)(c) of the DESDA says the tribunal makes an error of fact when it "base(s) its decision on an erroneous finding of fact that it ma(kes) in a perverse or capricious manner or without regard for the material before it." To base the decision on the finding of fact, the fact must be important to the outcome.

based on the file that the Claimant had a fair chance to participate in the appeal.

CONCLUSION

[29] I dismiss the appeal.

Kate Sellar
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
REPRESENTATIVES:	M. K., Appellant Jordan Fine, Representative for the Respondent