



Citation: *EP v Minister of Employment and Social Development*, 2021 SST 571

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. P.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated July 2, 2021
(GP-20-640)

Tribunal member: Janet Lew

Decision date: October 6, 2021

File number: AD-21-326

Decision

[1] Leave (permission) to appeal is refused because the appeal does not have a reasonable chance of success. The appeal will not be going ahead.

[2] The Claimant's option is to ask the Respondent, the Minister of Employment and Social Development (Minister), to take the appropriate remedial action in response to the erroneous advice he claims that he received.

Overview

[3] The Applicant, E. P. (Claimant), is appealing the General Division decision. The Claimant asked for payment of the Guaranteed Income Supplement (GIS) retroactive to his 65th birthday in April 2015. However, the General Division found that the Claimant could not be paid the GIS before August 2018 because he did not apply for it until July 2019.

[4] The Claimant says that he did not apply for the supplement before July 2019 because the Minister had given him erroneous advice. The General Division found that it did not have the jurisdiction or authority to review matters involving any erroneous advice or administrative errors by the Minister.

[5] The Claimant argues that the General Division made a jurisdictional error. He claims the General Division has the authority to decide whether the Minister gave him erroneous advice. He argues that the Minister misinformed him about the eligibility requirements for a GIS, so he held off on applying for the supplement.

[6] I have to decide whether the appeal has a reasonable chance of success.¹ Having a reasonable chance of success is the same thing as having an arguable case.²

¹ Under section 58(2) of the *Department of Employment and Social Development Act*, I am required to refuse permission if I am satisfied, "that the appeal has no reasonable chance of success."

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[7] I am not satisfied that there is an arguable case that the General Division failed to exercise its authority by refusing to examine whether the Minister gave him erroneous advice.

Issue

[8] Is there an arguable case that the General Division failed to exercise its authority by refusing to examine whether the Minister gave him erroneous advice?

Analysis

[9] The Appeal Division must be satisfied that the appeal has a reasonable chance of success before it gives the claimant permission to go ahead with their appeal. A reasonable chance of success exists if there is a certain type of error.³ These errors are about whether the General Division:

- (a) Failed to make sure that the process was fair;
- (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. (The error has to be perverse, capricious or without regard for the evidence before it.)

[10] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error and, if so, decides how to fix that error.

Is there an arguable case that the General Division failed to exercise its authority by refusing to examine whether the Minister gave him erroneous advice?

[11] The Claimant argues that the General Division failed to exercise its authority by refusing to examine whether the Minister gave him erroneous advice. He claims that if the General Division had considered this issue, it would have concluded that the

³ See section 58(1) of the *Department of Employment and Social Development Act*.

Minister gave him erroneous advice, and that he relied upon this advice to his detriment. He suggests that the General Division would have then been in a position to remedy the situation and grant him greater retroactive benefits to 2015.

[12] The Claimant does not have an arguable case on this point. The General Division did not err in determining that it did not have any jurisdiction to consider allegations of erroneous advice or administrative error.⁴ As the General Division noted, only the Minister and the Federal Court have the jurisdiction to review claims of erroneous advice or administrative errors.

[13] The Claimant may ask the Minister to consider taking remedial action under section 32 of the *Old Age Security Act*. Under that section, where the Minister is satisfied that a person has been denied a benefit, or a portion of a benefit, because of erroneous advice, 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...”

[14] The Claimant would need to make a request in writing to the Minister.

[15] I recognize that the Minister denies that they provided any erroneous advice. Possibly the Minister may deny the Claimant’s request for remedial action under section 32 of the *Old Age Security Act* that they provided erroneous advice. The Claimant’s option then would be to apply to Federal Court for judicial review of the Minister’s decision. Otherwise, the General Division does not have jurisdiction to set aside a decision of the Minister made under section 32 of the *Old Age Security Act*.⁵

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

⁵ See *Canada (Attorney General) v Vinet-Proulx*, 2007 FC 99.

Conclusion

[16] The Claimant does not have an arguable case that the General Division failed to exercise its authority, so I am refusing his application. This means the Claimant will not be moving ahead to the next stage of the appeal. This ends his appeal at the Appeal Division.

[17] The Claimant's option is to ask the Minister to take the appropriate remedial action in response to the erroneous advice he claims that he received.

Janet Lew
Member, Appeal Division