Citation: *DJ v Minister of Employment and Social Development*, 2022 SST 1211

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	D. J.
Respondent:	Minister of Employment and Social Development

Decision under appeal:	General Division decision dated September 1, 2022 (GP-21-2349)

Tribunal member:	Neil Nawaz
Decision date:	November 3, 2022
File number:	AD-22-753

Decision

[1] Leave to appeal is refused. I see no basis for this appeal to go forward.

Overview

[2] The Claimant was born in December 1960. On November 17, 2020, she went to her Member of Parliament's office and completed an application for the Canada Pension Plan (CPP) retirement pension. On her application, she wrote that she wanted her pension to start as soon as she qualified.

[3] The Claimant says that staff at her MP's office promised to send her application to Service Canada immediately.[1] However, Service Canada insists that it did not receive the application until March 31, 2021.[2] Service Canada says that the Claimant's retirement pension could therefore start no earlier than April 2021.

[4] The Claimant wants her pension to start as of December 2020, the month she turned 60. This Tribunal's General Division has already dismissed the Claimant's appeal for another four months of benefits. The General Division determined that an application is made only when it is actually **received** by Service Canada. It found no evidence that the MP's office mailed or otherwise sent the Claimant's application to Service Canada earlier than March 2021.

[5] The Claimant is now requesting permission to appeal from the Appeal Division. She alleges that the General Division made an error by misinterpreting a case about a fact situation similar to hers. She insists that her MP sent the application to Service Canada on November 17, 2020. She has been told that there wasn't anyone opening the mail at Service Canada because of the COVID-19 pandemic.

[6] The Claimant has also enclosed a letter from an employee in her MP's local constituency office. The letter says that staff mailed the Claimant's application to

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[1] Service Canada is the agency of the Minister of Employment and Social Development that deals with the public.
[2] Service Canada's copy of the application was signed by the Claimant on November 17, 2020 and bears a date stamp of March 31, 2021. See GD2-18.

Service Canada via regular mail on November 17, 2020. “However, Service Canada did not receive it and the constituent had to reapply in 2021, therefore delaying her benefits which should have begun when she turned 60 years old on December 1, 2020.”[3]

Issue

[7] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.[4]

[8] An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.[5] At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.[6] This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.[7]

[9] I have to decide whether the Claimant has raised an arguable case that falls under one or more of the permitted grounds of appeal.

Analysis

[10] I have reviewed the General Division’s decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Claimant does not have an arguable case.

[3] See letter dated September 6, 2022 by Stephanie Proulx, constituency assistant, AD1-9
[4] See *Department of Employment and Social Development Act* (DESDA), section 58(1).
[5] See DESDA, sections 56(1) and 58(3).
[6] See DESDA, section 58(2).
[7] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

The General Division does not rehear evidence or consider new evidence

[11] The Claimant comes to the Appeal Division making many of the same arguments that she made at the General Division. She insists that her MP's consistency office sent her application to Service Canada on November 17, 2020. She speculates that her application must have sat unopened and unprocessed in a Service Canada office for more than four months.[8] She argues that it is not reasonable to penalize her for the mistakes of others.

[12] Unfortunately, given the the narrow grounds of appeal permitted under the law, the Claimant cannot succeed at the Appeal Division by repeating evidence and arguments that she previously made at the General Division. An Appeal Division hearing is about whether the General Division made specific types of error; it's not meant to be simply a "do-over" of the General Division hearing.

[13] For these reasons, I can't consider the letter from the Claimant's MP. First, it wasn't available to the General Division because it wasn't prepared until after the hearing. Second, it contains nothing new—it doesn't say anything that the Claimant herself didn't already say to General Division.

[14] One of the General Division's jobs is to establish facts. In doing so, it is entitled to some leeway in how it chooses to weigh the available evidence. In this case, the General Division heard the Claimant testify that she entrusted her MP with her application in the expectation that his staff would send it to Service Canada on her behalf. The General Division did not hear that the Claimant had mailed the application herself. Nor did it hear any specific evidence that Service Canada in fact received her application in November 2020 but then sat on it for months.

[8] It is unclear from the file whether the Claimant's original November 17, 2020 application was eventually processed or whether the Claimant submitted a new backdated application in March 2021.

[15] From this, the General Division concluded that, more likely than not, the Claimant did not make an application in November 2020. I don't see an arguable case that the General Division made an error in coming to this conclusion.

There is no arguable case that the General Division misinterpreted the *Canada Pension Plan*

[16] As the General Division noted, the *Canada Pension Plan* says that a CPP retirement pension is not payable unless an application has been **made** in prescribed manner.[9] On **receiving** an application, the Minister can decide to approve or reject payment of the pension. The *Canada Pension Plan Regulations* say that an application for a benefit must be made by submitting it to the Minister in writing.[10]

[17] It is clear that an application is made only when the Minister actually receives it. Leaving it with your MP in the hope that he will forward it to the Minister is not enough.

[18] For applicants under 65, the retirement pension is payable the latest of:

- the month they reached age 60;
- the month after the Minister received the application; and
- the month they chose in their application.[11]

[19] The General Division determined that, in the Claimant's case, the latest of the above three milestones was April 2021, the month after the Minister received her application.

[20] I don't see an arguable case that the General Division erred in its application of the facts to the law. The Claimant may not agree with this analysis, but mere disagreement is not a ground of appeal.

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[9] See *Canada Pension Plan*, sections 60(1), 60(6), and 60(7).
[10] See *Canada Pension Plan Regulations*, section 43(1).
[11] See *Canada Pension Plan*, section 67(3.1).

There is no arguable case that the General Division ignored relevant case law

[21] The Claimant alleges that the General Division disregarded a case that was applicable to her own.

[22] I don't see an arguable case on this point.

[23] The case in question is a two-year-old General Division decision called *G.C.*[12] Contrary to what the Claimant says, the General Division did not ignore it but spent time explaining why its fact situation was different from hers. As the General Division noted, *G.C*. was a case in which the claimant had evidence that she actually mailed her application to Service Canada. However, no such evidence existed in this case.

[24] In any event, there was another reason *G.C*. was inapplicable—the Appeal Division overturned it a few months later, although neither the Claimant nor the General Division appears to have been aware of this development.

[25] The trouble with *G.C.* was that the General Division deemed the mailing date to be the application date, having found that the Minister misplaced the claimant's application.[13] The Appeal Division found that, in doing so, the General Division exceeded its jurisdiction by attempting to address an administrative error made by the Minister. As in this case, the Minister denied receiving G.C.'s CPP retirement application and refused to backdate her pension's start date. The Minister argued that, even if she had lost the application, the power to correct such an administrative error belonged to her and her alone at her discretion.

[26] The Appeal Division agreed, citing section 66(4) of the CPP, which contains language suggesting that the Minister's power to address her own administrative errors is discretionary or voluntary. The Courts have said that non-judicial decision-makers such as the Social Security Tribunal can only exercise such powers as are given to

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[12] See *G.C. v Minister of Employment and Social Development*, 2020 SST 1241.
[13] See *Minister of Employment and Social Development v G.C.*, 2021 SST 301.

them by statute. In a case called *Pincombe*, the Federal Court of Appeal ruled that the General Division could not entertain an appeal of a Ministerial decision made under section 66(4). That was because such decisions were not explicitly listed among those subject to the Tribunal's oversight.[14]

[27] In this case, if the Minister mishandled the Claimant's application, *G.C.* does not assist her. In fact, it appears to do the opposite—by barring the General Division from remedying an administrative error that the Minister, in her discretion, has previously refused to correct.

The General Division must follow the letter of the law

[28] If the Claimant did send her application to Service Canada in November 2020, and there was no one to open it, then she has been done an injustice. However, there is nothing I or the General Division can do about it. As much as we might sympathize with the Claimant, we are bound to follow the letter of the law.[15] This Tribunal is not a court but a statutory decision-maker, and it cannot simply order the Minister to pay the Claimant additional benefits on compassionate grounds.

Conclusion

[29] The Claimant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, permission to appeal is refused.

Member, Appeal Division

[14] *Pincombe* involved a predecessor tribunal of the General Division and a prior version of section 66(4) but its principles remain valid today.
[15] See *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.