



Citation: *NB v Minister of Employment and Social Development*, 2023 SST 791

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: N. B.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated June 6, 2023
(GP-22-1861)

Tribunal member: Kate Sellar

Decision date: June 15, 2023

File number: AD-23-592

Decision

[1] I'm refusing leave (permission) to appeal. The appeal will not proceed. These are the reasons for my decision.

Overview

[2] N. B. (Claimant) applied for a *Canada Pension Plan* (CPP) retirement pension in the year he turned 60. The Minister of Employment and Social Development (Minister) approved the application. His pension was effective July 2017. The Minister calculated the pension using the information in the application.

[3] In the year the Claimant turned 65, he applied for his *Old Age Security* (OAS) pension. That application contained a different date of birth. The Minister concluded this meant one of the applications (CPP or OAS) used a wrong date of birth. The Minister required the Claimant to file a birth certificate. Using the information in the birth certificate the Minister recalculated the CPP retirement pension. The recalculation resulted in an overpayment of \$2,415.36. The Minister decided the Claimant had to repay the overpayment. The Minister set up a repayment schedule and deducts approximately \$100.00 each month from his pension to recover the overpayment.

[4] The Claimant agreed the Minister used the wrong date of birth to calculate his CPP retirement pension. But he says it wasn't his fault. He began his application online, but he finished it in person. He says a Service Canada clerk told him the application was correct. The Claimant said he explained that he could not afford to pay the overpayment. He says the Minister ignored the fact that he did not make the mistake. He said the Minister also ignored his statement that repayment would cause financial difficulties.

Issues

[5] The issues in this appeal are:

- a) Can it be argued that the General Division made an error by acting beyond its powers or failing to exercise its powers?

- b) Does the application set out evidence that wasn't presented to the General Division that would justify granting the Claimant permission to appeal?

I'm not giving the Claimant permission to appeal

[6] I can give the Claimant permission to appeal if their application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact;
- made an error in applying the law to the facts.¹

[7] I can also give the Claimant permission to appeal if their application sets out evidence that wasn't presented to the General Division.²

[8] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

The General Division didn't act beyond its powers or refuse to exercise its powers.

[9] The Claimant isn't satisfied with the General Division decision because it confirms his suspicion that the General Division lacks authority to solve his problem with the Minister assessing an overpayment of his CPP retirement pension.³

[10] The General Division has the power to decide questions of eligibility for the CPP retirement pension.

¹ See sections 58.1(a) and (b) in the *Department of Employment and Social Development Act (Act)*.

² See section 58.1(c) of the Act.

³ See AD1-5.

[11] However, when a claimant wants to have a CPP retirement pension overpayment forgiven in whole or in part because of a mistake that they allege Service Canada made, the Tribunal doesn't have the power to decide that question.⁴

[12] The Claimant hasn't raised any possible error that the General Division made with respect to its jurisdiction that would justify granting him permission to appeal. The Claimant's suspicion was right: the General Division doesn't have the jurisdiction to decide about a possible error by Service Canada, and then remedy that kind of error through remission. It also doesn't have the jurisdiction to decide on any new overpayment arrangements because of financial hardship.

[13] The General Division decision talks about the steps the Claimant can take with Service Canada to address the overpayment.⁵

The Claimant hasn't set out any new evidence that would justify granting leave to appeal.

[14] The Claimant hasn't set out any new evidence at the Appeal Division. Accordingly, new evidence cannot form the basis of a decision granting permission to appeal.

Conclusion

[15] Permission to appeal is refused. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division

⁴ See paragraph 10 in the General Division decision, which describes the law on this issue from section 66(4) of the *Canada Pension Plan* (CPP).

⁵ See paragraphs 10 and 11 in the General Division decision.