



Citation: *CV v Minister of Employment and Social Development*, 2023 SST 1315

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. V.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated July 12, 2023
(GP-23-624)

Tribunal member: Kate Sellar

Decision date: October 3, 2023

File number: AD-23-780

Decision

[1] I'm refusing to give the Claimant permission to appeal. The appeal will not go ahead to the next steps. These are the reasons for my decision.

Overview

[2] C. V. (Claimant) turned 60 years old in December 2021. The following month, she tried to apply for a *Canada Pension Plan* (CPP) retirement pension online. The online process wouldn't let her complete her application.

[3] The Claimant spent the next several months trying to find out what the problem was. She couldn't get through to Service Canada. When she finally did, it took some time before they discovered that the birth date she had given in the application (December 27, 1961) didn't match their records.

[4] The Claimant had to apply for a new birth certificate. That took months. Then it took a long time for Service Canada to update its records. In the meantime, the Claimant couldn't complete her online application.

[5] In August 2022, the Claimant submitted a new application by mail and provided a copy of her birth certificate. The Minister of Employment and Social Development (Minister) approved the application and started the retirement pension payments in September 2022.

[6] The Claimant disagreed with the start date. She appealed to this Tribunal. The General Division found that the law doesn't allow the Claimant's retirement pension to start before September 2022.

Issues

[7] The issues in this appeal are:

- a) Is there an arguable case that the General Division failed to provide the Claimant with a fair process?

- b) Is there an arguable case that the General Division made an error of fact about what happened when the Claimant first tried applying for the retirement pension?
- c) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

[8] 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; or
- made an error applying the law to the facts.¹

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

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

There's no arguable case that the General Division failed to provide the Claimant with a fair process.

[11] The Claimant argues generally that the process has been unfair.

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

² See section 58.1(c) of the Act.

[12] What fairness requires depends on the context. Claimants should have a chance to make arguments about every fact or factor likely to affect the decision.³

[13] The General Division held a case conference and explained to the Claimant what the CPP says about when retirement pensions can start. The General Division explained (and followed up in writing) to describe in some detail the process for asking Service Canada to investigate whether their actions amount to erroneous advice or administrative error. The General Division provided the Claimant with deadlines to provide all her arguments in writing, and then wrote reasons explaining why it was dismissing the appeal.

[14] I'm satisfied that there's no argument here that the General Division failed to give the Claimant a fair chance to make her case. The General Division can't reach a different decision about when the payments start based on any possible error by Service Canada. The Claimant has the information to explore that option if she chooses to do so. There's no arguable case that the General Division failed to provide the Claimant with a fair process.

There's no arguable case that the General Division made an error of fact about when the Claimant first tried to apply for the retirement pension.

[15] The Claimant argues that the General Division got the facts wrong. She explains that she tried applying for the disability pension in January 2022, and she turned 60 on December 27, 2021. She had major challenges getting through to Service Canada, and weeks later someone at Service Canada told her that her birthday was December 27, 1962 so she wasn't eligible for the retirement pension yet. It took months to sort out this problem. It turns out that there was an error in her birth certificate. The Claimant's payments started in September 2022.

[16] There's no arguable case that the General Division got the facts wrong. An error of fact must be important enough that it could change the outcome of the appeal. The

³ See *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699, and *Kouama v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9008.

General Division doesn't seem to have described the problem the Claimant experienced with Service Canada any differently than the Claimant describes it.

[17] The General Division explained that it must apply the CPP, and the CPP sets out the earliest date the Claimant's payments can start.⁴ In her case, that date is the month after she applied. Since the January 2022 application was never completed, the relevant application is the second one that she sent by mail in August 2022. As a result, her payments start September 2022.

[18] I see no argument for an error of fact about the timing of the Claimant's application that would have a reasonable chance of success.

No new evidence that could justify giving the Claimant permission to appeal

[19] The Claimant hasn't provided any new evidence that could justify giving her permission to appeal the start date of her retirement pension.

[20] This tribunal must apply the law about when retirement pensions start. To calculate that date, we must select the latest of:

- the month the person turned 60,
- the month after the Minister received the application,
- the month the person chose in the application.

[21] The Claimant has no new information about her birthdate, her application, or the date she chose in the application for her pension to start, so there is no new evidence that could justify giving her permission to appeal.

[22] I'm satisfied that the General Division didn't ignore or misunderstand the evidence. The Claimant had a frustrating experience with Service Canada, but I see no

⁴ See section 67(3.1) of the *Canada Pension Plan* (CPP), and paragraphs 14 and 15 in the General Division decision.

possible error in the General Division's decision here. The General Division had to follow the CPP to decide when her retirement pension payments started.

[23] If the Claimant wishes to raise an error by Service Canada, she has the information necessary to ask Service Canada to investigate.⁵

Conclusion

[24] I refused to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division

⁵ See GD8.