



Citation: *SR v Minister of Employment and Social Development*, 2024 SST 171

Social Security Tribunal of Canada

Appeal Division

Decision

Appellant:
Representative:

S. R.
Susan Poste

Respondent:
Representative:

Minister of Employment and Social Development
Viola Herbert

Decision under appeal:

General Division decision dated October 6, 2022
(GP-21-1475)

Tribunal member:

Kate Sellar

Type of hearing:

In Writing

Decision date:

February 23, 2024

File number:

AD-23-553

Decision

[1] The Claimant's appeal is dismissed. These are the reasons for my decision.

Overview

[2] S. R. (Claimant) began receiving a Canada Pension Plan (CPP) survivor's pension in July 2003. She received a reduced CPP survivor's pension because she met the requirements in the CPP at the time. She was:

- under the age of 45 at the time of her spouse's death;
- without any dependent children; and
- wasn't disabled.

[3] The CPP changed on January 1, 2019. Service Canada recalculated the Claimant's CPP survivor's pension.¹ She started receiving the full survivor's pension effective January 1, 2019.

[4] The Claimant asked for a retroactive payment for the amount that was reduced from her CPP survivor's pension from July 2003 until December 2018. The Minister of Employment and Social Development (Minister) refused her request initially and on reconsideration.

[5] The Claimant appealed to this Tribunal. On October 6, 2022, the General Division dismissed the appeal without a hearing (summary dismissal). The General Division decided that the Claimant's appeal didn't have a reasonable chance of success. The General Division found that the CPP allowed for the Claimant to receive the full survivor's pension, but not until January 1, 2019.

¹ See section 44(1)(d) (i) and (ii) which set out the requirements for receiving the survivor's pension before 2019 and after 2018, respectively.

[6] The Claimant appealed the General Division's decision. The Appeal Division accepted her appeal.² She had a case conference in August 2023. In September 2023, the Tribunal allowed the Claimant to make further written arguments about a case the Minister raised during the case conference.³

[7] The Claimant argues that the General Division made an error by failing to consider whether the CPP pension rules violate her Charter rights. I've decided that the General Division didn't make an error under the *Department of Employment and Social Development Act* (Act).

Issue

[8] The issues in this appeal are the following:

- a) Did the General Division fail to give the Claimant a fair opportunity to raise the Charter argument at the General Division?
- b) Did the General Division fail to exercise its jurisdiction when it didn't discuss the Charter argument in the final decision?
- c) Did the General Division make an error of law by finding that she wasn't entitled to retroactive payment of the full survivor's pension prior to January 1, 2019?
- d) Did the General Division make any error of fact by ignoring the Claimant's Charter argument?

² The Claimant's appeal was accepted as filed on time in accordance with section 240(1) of the *Budget Implementation Act*, 2021, No. 1. See June 1, 2023 acknowledgement letter for detail. No permission to appeal is necessary, so I must consider whether the General Division made an error under section 58 of the *Department of Employment and Social Development* as it was before the legislative changes in December 2022.

³ In *Estate of PM v Minister of Employment and Social Development*, 2023 SST 847, the Appeal Division refused permission to appeal (not a summary dismissal case). The estate in that case raised Charter arguments for the first time in the request for permission to appeal. This case arises in a somewhat different context, as the Claimant in the present appeal did raise the Charter at the General Division but never completed the notice.

Analysis

[9] I can allow the appeal if the Claimant shows that the General Division did any one of the following:

- Failed to provide the Claimant with a fair process.
- Acted beyond its jurisdiction or refused to exercise its jurisdiction.
- Made an error of law.
- Based its decision on an error of fact that it either:
 - (a) made in a “perverse or capricious” way; or
 - (b) made by ignoring or misunderstanding the facts.

The Claimant’s Charter argument cannot form the basis for any error by the General Division.

[10] The Claimant hasn’t shown that the General Division made any error. Accordingly, I must dismiss the Claimant’s appeal.

- **The General Division didn’t fail to give the Claimant a fair opportunity to raise the Charter argument at the General Division.**

[11] If the General Division fails to provide a fair process to parties, that can be an error. What fairness requires in each case will depend on a variety of factors.⁴ Part of the duty to act fairly is to allow people the right to be heard. The right to be heard is about giving people the chance to answer the decision maker’s questions. The right to be heard is also about giving people the chance to make arguments on every fact or factor likely to affect the decision.⁵

[12] When the Claimant first appealed to the General Division, she clearly raised the right to equality under section 15 of the Charter.⁶ The General Division held a case

⁴ See *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC).

⁵ See *Kouama v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9008 (FC).

⁶ See GD1-10 dated May 15, 2021 and received by the General Division on June 28, 2021.

conference to discuss this question and to explain the requirements for notice when raising a Charter argument.

[13] The General Division followed up the case conference with a letter. In that letter, the General Division gave the Claimant a deadline for providing the required notice for making a Charter argument. The deadline (September 3, 2021) came and went. The Claimant didn't provide a Charter notice. The Claimant didn't ask for an extension of time. The Tribunal sent another letter dated September 7, 2021, stating that it did not receive the Charter notice from the Claimant, and that therefore the Tribunal understood that she did not intend to make a Charter argument. The letter stated that the Tribunal would proceed with the appeal and would not address Charter issues.

[14] Several days later, the General Division wrote to the Claimant, explaining that it intended to dismiss the appeal without a hearing.⁷ The letter explained that the Tribunal must summarily dismiss an appeal if it's satisfied that the appeal has no reasonable chance of success. The Tribunal received contact information for a new representative for the Claimant. Shortly after that, the General Division received the arguments about why the appeal shouldn't be dismissed.⁸ Those arguments did not mention the Charter or any argument about discrimination. The argument focussed on the Claimant's financial situation and the reasons she needed the full survivor's pension to have started earlier.

[15] The Claimant hasn't shown that the General Division's process in handling her Charter argument was unfair. I'm satisfied that the General Division gave the Claimant the chance to make her Charter arguments. The first step in that process was to provide the completed Charter notice, and the Claimant didn't complete that step. Without completing that step, the Charter aspect of the appeal simply couldn't proceed.⁹

[16] The Claimant's arguments amount to a request to argue Charter issues now at the Appeal Division. But the Claimant cannot raise a Charter argument for the first time

⁷ See GD0.

⁸ See GD8, GD9, and GD10.

⁹ See section 20, *Social Security Tribunal Regulations* SOR/2013-60. This is the version of the regulations that were in force when the Claimant's appeal was at the General Division.

at the Appeal Division in this way. The Claimant needs to show that the General Division made an error. I see no error arising from failing to address the Charter. The Claimant abandoned that part of her appeal at the General Division.¹⁰ The Claimant argues that she never abandoned it, but by failing to provide her notice, she decided not to proceed with that part of the appeal.

– **The General Division didn't fail to exercise its jurisdiction when it didn't discuss the Charter argument in the final decision.**

[17] When the General Division fails to decide a question it has the power to decide, or decides something it doesn't have the power to decide, this can be an error.

[18] The Claimant argues that the General Division made an error of jurisdiction by deciding to summarily dismiss the appeal. The Claimant argues that the General Division shouldn't have decided that question without first deciding whether the way the CPP applied to her was discriminatory based on age and disability.¹¹

[19] The Claimant hasn't shown that the General Division made an error of jurisdiction. The General Division could not decide a Charter question without a notice, and the Claimant didn't provide the notice. Once the deadline passed for the notice, the General Division had to decide what remained of the appeal. The General Division must summarily dismiss when it decides there's no reasonable chance of success.

[20] The Claimant hasn't shown that the General Division acted outside its jurisdiction.

– **The General Division didn't make an error of law by finding that the Claimant wasn't entitled to the retroactive payments she wanted.**

[21] The General Division makes an error when it gets the law wrong or applies the wrong legal test.

¹⁰ See AD8-9 for the Claimant's argument that she did not abandon her Charter arguments.

¹¹ See AD3-03.

[22] I understand the Claimant to argue that the General Division should have found that she was entitled to a full survivor's pension for her back to July 2003, when she first started receiving the partial pension.

[23] I cannot find that the General Division made an error of law about this. The General Division noted that it must follow the law as it set out in the CPP. The General Division explained that there was nothing in the CPP that would allow for retroactive payments of a survivor's pension after the law changed in January 2019.¹² Therefore, the appeal had no reasonable chance of success.

[24] The Claimant outlined good reasons why financially she needed the retroactive payments, and she continues to make those arguments at the Appeal Division. But I find no legal error in the General Division's conclusion: nothing in the law allowed it to consider why the Claimant needed the full survivor pension before January 2019.

– **The General Division didn't make an error of fact by ignoring the Claimant's Charter argument.**

[25] When the General Division makes a mistake about the facts (either from misunderstanding or ignoring evidence), this can be an error of fact.

[26] I've reviewed the record and I'm satisfied that the General Division didn't ignore or misunderstand the Claimant's evidence.¹³ When the Claimant appealed to the General Division, she stated that enforcing an age requirement (as it existed prior to 2019) for a full survivor's pension was discriminatory under section 15 of the Charter based on her age and disability. She had no control over her age at the time of the contributor's death.

[27] The General Division didn't ignore or misunderstand the facts about the Claimant's age or disability. The General Division is presumed to have considered all the evidence. The Claimant can overcome that presumption when the evidence was

¹² See paragraph 19 in the General Division decision.

¹³ The General Division completes this kind of review before dismissing cases at the leave to appeal stage. See *Karadeolian v Canada (Attorney General)*, 2016 FC 615. I've completed that kind of review in this case too, although this appeal is somewhat different because this is a summary dismissal decision at the General Division and therefore didn't need permission to appeal first.

important enough that the General Division should have discussed it.¹⁴ The General Division could not consider the Charter (discrimination) arguments about her age and disability without a proper notice of a Charter argument.

[28] The Claimant hasn't proven that the General Division made any error that I can address.

Conclusion

[29] The appeal is dismissed. The Claimant hasn't proven that the General Division made an error.

Kate Sellar
Member, Appeal Division

¹⁴ See *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498.