



Citation: *GF v Minister of Employment and Social Development*, 2024 SST 943

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** G. F.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** General Division decision dated October 12, 2023  
(GP-20-589)

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**Tribunal member:** Kate Sellar

**Decision date:** **August 8, 2024**

**File number:** AD-24-49

## Decision

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

## Overview

[2] G. F. (Claimant) worked well beyond the age of 65. He turned 70 years of age in November 2012. He applied for the Canada Pension Plan (CPP) retirement pension in April 2015.

[3] The Minister of Employment and Social Development (Minister) granted the Claimant a CPP retirement pension effective May 2014.

[4] The Claimant disputed the Minister's decision. He wanted to receive pension payments dating back to his 70th birthday. He says he has lost out on more than \$22,000.00 because he did not apply until he was nearly 73 years of age.

[5] The Claimant appealed to this Tribunal. The General Division dismissed the appeal without a hearing. The Claimant appealed. The Appeal Division found that the General Division should have considered the Claimant's possible Charter claim. The Claimant's appeal returned to the General Division. The General Division issued an order dismissing the Charter aspect of the appeal. This meant that the Claimant couldn't raise Charter arguments at the General Division hearing.

[6] The General Division dismissed the rest of the Claimant's appeal on October 12, 2023. The General Division found that the Claimant wasn't entitled to any additional retroactive payments of his CPP retirement pension. The General Division applied the CPP and found that the Claimant received his retirement pension on the earliest possible start date.<sup>1</sup> His pension couldn't start in November 2012 when he turned 70.

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<sup>1</sup> See section 67(3.1) of the *Canada Pension Plan* (CPP). See also paragraphs 17 to 20 in the General Division decision, applying the law about pension start dates to the Claimant's situation.

[7] The Claimant requests permission to appeal the General Division's October 12, 2023 decision to the Appeal Division.<sup>2</sup>

## **Preliminary Matter**

[8] The Claimant requested that a mathematician decide whether he would receive permission to appeal.<sup>3</sup> He explains that this is necessary since he is raising an issue of both statutory interpretation and "mathematic equality."

[9] The Tribunal did not consider the Claimant's request. The legislation, regulations and rules do not provide for a process by which claimants can request members with specific educational or professional backgrounds.

[10] My biographical information is publicly available. My role as the member assigned to this appeal is to decide whether the Claimant has raised an arguable case for an error by the General Division. I'm duly appointed to complete that task.

## **Issues**

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

- a) Could the General Division have made any errors of fact in the Claimant's appeal?
- b) Could the General Division have failed to provide a fair process by failing to address a series of arguments the Claimant makes about the CPP generally and whether it is valid and applies to his situation?
- c) Could the General Division have made any error of law that would justify granting permission to appeal?
- d) Does the Claimant's application set out evidence that wasn't presented to the General Division?

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<sup>2</sup> See ADN1-2.

<sup>3</sup> See ADN1D.

## **I'm not giving the Claimant permission to appeal**

[12] I can give the Claimant permission to appeal if the 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.<sup>4</sup>

[13] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.<sup>5</sup>

[14] 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 made errors of fact in the Claimant's appeal**

[15] The Claimant argues that the General Division made errors of fact about his position in the appeal. He also argues that the General Division ignored important evidence.

### **– There's no arguable case that the General Division made an error of fact about the Claimant's position in the appeal**

[16] The Claimant argues that the General Division made the following errors about his position in the appeal:

- finding that he wanted the effective start date of his pension to be age 70; and

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<sup>4</sup> See sections 58.1(a) and (b) *Department of Employment and Social Development Act (Act)*.

<sup>5</sup> See section 58.1(c) of the Act.

- stating that he didn't dispute the calculation of his pension term value.<sup>6</sup>

[17] The Claimant argues that the General Division misunderstood the issue he appealed. He says the issue he is litigating is equal pension treatment or the right to be fully paid for past completed work in the form of a lifetime annuity.<sup>7</sup> I acknowledge that the Claimant has said at various times in his appeal that he isn't arguing about the number of retroactive months he would receive. At one point, he argued that the appeal was about Service Canada's negligence. Now at the Appeal Division, he says the appeal is fundamentally about equal pension treatment.<sup>8</sup>

[18] The Claimant hasn't raised an arguable case that the General Division misunderstood the Claimant's position on appeal.

[19] I reached this conclusion by considering that when the Claimant asked the Minister to reconsider its decision about his retirement pension, he stated that he wanted to receive pension benefits dating back to age 70.<sup>9</sup> The Minister's reconsideration decision is specifically about the effective date for the CPP retirement pension. It is that reconsideration decision that forms the basis of the appeal to the General Division.<sup>10</sup> The General Division ordered that the Claimant's Charter claim couldn't proceed. So, the remaining issue at the General Division was about the Claimant's pension specifically.

[20] The Claimant may have wished to make more general arguments about the equal pension treatment, but there's no arguable case that the General Division misunderstood his position in the appeal. The General Division was clear about its jurisdiction. The General Division identified what question it needed to answer, based on the reconsideration decision under appeal. As explained below, the General Division

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<sup>6</sup> See ADN1-3.

<sup>7</sup> See ADN1M-2.

<sup>8</sup> See GD1-6, AD1-3, and ADN1M-2.

<sup>9</sup> See GD2-12.

<sup>10</sup> See sections 81 and 82 in the CPP.

identified other arguments made by the Claimant but was unable to take jurisdiction over them.

[21] Accordingly, the argument that the General Division made an error by finding that the Claimant wanted his retirement pension start date to be age 70 has no reasonable chance of success.

[22] Similarly, the Claimant hasn't raised an arguable case (or provided support in the record) for an error of fact about his position on the term value.

– **There's no arguable case that the General Division ignored important facts in the Claimant's appeal**

[23] The Claimant argues that the General Division ignored important facts such as:

- the value of the CPP investment fund; and
- the information supporting his allegations of procedural violations by the Minister in communicating about the impact on contributors of applying after the age of 70.<sup>11</sup>

[24] In my view, there's no arguable case that the General Division made an error by ignoring these facts.

[25] In its decision, the General Division:

- cited the law about the limits of the Tribunal's power; and
- explained what the law says about when retirement pensions start, and then applied it to the Claimant's situation to determine his pension start date.<sup>12</sup>

[26] The General Division even briefly identified the other arguments the Claimant made, and explained why they were not questions that the General Division had the

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<sup>11</sup> See ADN1L-27, items 1 through 10.

<sup>12</sup> See paragraphs 27 and 29 in the General Division decision, citing sections 81 and 82 of the CPP, as well as the decision in *Miter v Canada (Attorney General)*, 2017 FC 262.

power to decide. Strictly speaking, this wasn't necessary, but the General Division explained specifically that it didn't have the power to make decisions about:

- whether the CPP fund was unjustly enriched at the expense of some members; and<sup>13</sup>
- the way the Minister communicates about the CPP retirement pension.<sup>14</sup>

[27] The Claimant hasn't raised an arguable case about how the General Division's approach amounts to an error. The General Division focused on the facts that were relevant to the legal issues it had the jurisdiction to decide.

**There's no arguable case that General Division failed to provide a fair process by failing to discuss whether the CPP retirement pension laws are valid and applicable**

[28] As I understand it, the Claimant argues that the General Division failed to provide him with a fair process by failing to address a series of arguments he made about the validity and applicability of the CPP. As I understand it, he isn't making arguments about being unable to fully present his case or being unclear about what the case was to be met. The Claimant says that the General Division should have addressed and considered the arguments he made about:

- whether he truly applied "late" for the retirement pension or not;
- alleged violations of the principles of fundamental justice by the Minister;
- whether the CPP retirement pension start date rules are void for criminality; and
- whether the laws about CPP retirement pension are of no force and effect.<sup>15</sup>

[29] What fairness requires will vary according to the circumstances. Fairness is fundamentally about the opportunity to be heard by an impartial decision maker. The

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<sup>13</sup> See paragraph 28 in the General Division decision.

<sup>14</sup> See paragraphs 23 to 26 in the General Division decision.

<sup>15</sup> See ADN1-3 and ADN1C-2 and following.

opportunity to be heard is about having the opportunity to make arguments about every fact or factor relevant in the appeal.<sup>16</sup>

[30] The General Division controls its own process. The General Division takes an active approach to adjudication. There is no overarching requirement (in terms of fairness, or otherwise) for the General Division to address every argument raised by the Claimant, especially when that argument isn't relevant to the issues the General Division has the power to decide. The Supreme Court of Canada has made clear that reviewing courts cannot expect administrative decision makers to respond to every argument or line of possible analysis.<sup>17</sup> Similarly, the Federal Court of Appeal has concluded that it's not necessary for a written decision to address every fact and every argument place before it.<sup>18</sup>

[31] The General Division was considering when the Claimant's retirement pension was to start by applying the CPP to the facts of the Claimant's application for a retirement pension. The General Division explained that a challenge to the validity of that law or the fairness of the Minister's actions generally were not issues it could address.<sup>19</sup>

[32] Whether the Claimant applied "late" or not has no bearing on the interpretation of the start date rules, which focus on the Claimant's age and date of application. The Claimant asserts, without any basis in law, that since there is no statutory regulation specifying a last date for application, then there can be no such thing as a late application that results in a limit on retroactivity.<sup>20</sup>

[33] The General Division explained that the limit on retroactivity comes from the rules about when pensions start. The General Division explained that the start date for a CPP retirement pension is based entirely on the claimant's age, the application date, and any

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<sup>16</sup> See *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC). See also paragraph 15 in *Kouama v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9008 (FC).

<sup>17</sup> See paragraph 128 in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (CanLII).

<sup>18</sup> See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

<sup>19</sup> See paragraphs 21 and following in the General Division decision.

<sup>20</sup> See ADN1L-23.



start date the claimant proposes in the application.<sup>21</sup> The Claimant hasn't raised an arguable case that the General Division was wrong in this regard. I see no arguable case that the General Division needed to address the proper interpretation of the start date rules, given that the General Division quoted the rule in its decision and the meaning was plain.

[34] Similarly, the General Division didn't have the jurisdiction to remedy concerns about possible violations of the principles of fundamental justice that arise from the operation of the law. The General Division was clear about its jurisdiction: the Tribunal's jurisdiction is limited to specific matters arising out of the Minister's reconsideration decisions.<sup>22</sup>

[35] The General Division can decide any question of law necessary for deciding an appeal.<sup>23</sup> But regardless, in the case of an appeal relating to the CPP, the Tribunal may only decide questions of law or fact relating to four items, none of which are about general retirement pension principles.<sup>24</sup>

[36] This appeal was about the start date of the Claimant's retirement pension. The General Division had already decided that it would not hear the Claimant's Charter challenge to the law about when retirement pensions start. The General Division doesn't have the power from the CPP or any other law to consider general issues about pension policy. The General Division also doesn't have the power to decide cases based on other common law notions about the validity of the legislation outside of a Charter review.

[37] There's no evidence here to support the assertion that fairness required the General Division to address in detail a series of allegations about the operation and validity of the CPP. The General Division explained that these issues were not properly before it.

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<sup>21</sup> See paragraph 21 in the General Division decision.

<sup>22</sup> See sections 81 and 82 of the *Canada Pension Plan* (CPP).

<sup>23</sup> See section 64(1) of the Act.

<sup>24</sup> See section 64(2)(a) through (d) of the Act.

## **There's no arguable case that the General Division made an error of law**

[38] The Claimant makes a series of arguments about the General Division having made errors of law.<sup>25</sup>

[39] First, the Claimant argues that the General Division made an error of law by stating that the behaviour of the Minister isn't relevant to the question on appeal.<sup>26</sup> The Claimant says the behaviour is relevant because the Minister's public-facing materials on the issue of the retirement pension amount to negligent misrepresentation and fraudulent misrepresentation.<sup>27</sup>

[40] Second, the Claimant argues that the General Division failed to recognize that the CPP retirement pension is a financial annuity instrument. He says that these instruments cannot have punitive conditions placed on it based on the timing of an application.

[41] Third, the Claimant argues that the impact of the rule (about start dates for retirement pensions) on claimants in Quebec should have been considered.

[42] Fourth, the Claimant argues that the Minister didn't act consistent with its fiduciary duties.

[43] The Claimant has provided no argument as to how the General Division has the jurisdiction to consider any of these four items. Accordingly, I see no arguable case for an error of law by the General Division here. There's no arguable case that the General Division needed to consider these kinds of issues as part of fairness. Similarly, there's no arguable case that the General Division needed to consider these issues to avoid legal error. The Claimant has provided no support for the idea that the General Division has jurisdiction over arguments like this.

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<sup>25</sup> See ADN1E and ADN1N-2.

<sup>26</sup> See ADN1L-4.

<sup>27</sup> See ADN1L-23.

[44] Fifth (and finally), the Claimant argues that when properly read and understood, the legislation creates an age 70 default effective start date for all later than age 70 applicants. He says this interpretation is more consistent with the context and purpose of the legislation.

[45] However, the Claimant has raised no arguable case for an error of law since he identified no ambiguity in the wording of the CPP itself. The wording does not establish the default start date he describes. The General Division quoted from the rule, described what it means, and applied it.<sup>28</sup> The Claimant hasn't raised an arguable case for an error in the interpretation of the start date for the retirement pension.

### **The Claimant hasn't set out new evidence that would justify giving the Claimant permission to appeal**

[46] The Claimant's application doesn't set out evidence that wasn't already presented to the General Division that relates to any issue within jurisdiction on appeal. Accordingly, new evidence cannot form the basis for giving him permission to appeal.

[47] I've reviewed the record. I'm satisfied that the General Division didn't ignore or misunderstand the evidence in this appeal.<sup>29</sup> The Claimant continues to make arguments about items over which this Tribunal doesn't have jurisdiction. He also refiled some of the documents he filed previously with the General Division, including his Charter arguments, which are not the subject of this appeal of the October 2023 decision.<sup>30</sup>

[48] The General Division gave a decision that applied the law about when retirement pensions start to the Claimant's situation. The Claimant wishes to challenge the validity of the law more generally, but the Claimant hasn't brought any challenge to the General Division's decision that has a reasonable chance of success.

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<sup>28</sup> See paragraphs 17 to 19 in the General Division decision.

<sup>29</sup> The Federal Court set the expectation for this type of review by the Appeal Division in a case called *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

<sup>30</sup> See ADN1L-49 and follow for the re-filed Charter arguments, and ADN1L-91 and following for the second edition.

## **Conclusion**

[49] I've refused the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division