



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. S. v Minister of Employment and Social Development*, 2020 SST 840

Tribunal File Number: AD-20-737

BETWEEN:

**D. S.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: September 30, 2020

## DECISION AND REASONS

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] D. S. applied for and began to receive a Canada Pension Plan retirement pension as of May 2018. In August 2019 he applied for a Canada Pension Plan disability pension. The Minister of Employment and Social Development refused the disability pension application. It decided that the Claimant applied too late to replace his retirement pension with this pension.

[3] The Claimant appealed this decision to the Tribunal's General Division. The General Division summarily dismissed the appeal. It also decided that the Claimant applied too late to replace his retirement pension with a disability pension.

[4] The Claimant's appeal to the Tribunal's Appeal Division is dismissed. The General Division made no error upon which the Appeal Division can intervene.

### PRELIMINARY MATTERS

[5] This appeal was decided on the basis of the documents filed with the Tribunal for the following reasons:

- a) The legal issues to be decided are straightforward;
- b) The parties had adequate opportunity to file written submissions;
- c) Neither party requested an oral hearing;
- d) The *Social Security Tribunal Regulations* require that appeals be concluded as quickly as the circumstances and considerations of fairness and natural justice permit.<sup>1</sup>

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<sup>1</sup> *Social Security Tribunal Regulations* s. 3(1)

## ISSUE

[6] Did the General Division make an error upon which the Appeal Division can intervene?

## ANALYSIS

[7] An appeal to the Tribunal's Appeal Division is not a re-hearing of the original claim. Instead, the Appeal Division can only decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or
- d) based its decision on an important factual error.<sup>2</sup>

The Appeal Division must dismiss an appeal unless at least one of these errors has been made.

[8] The Claimant does not dispute any of the facts. In particular, he agrees that he applied for a retirement pension in May 2018, and a disability pension in August 2019. I have reviewed the written record. The General Division did not overlook or misconstrue any important information. It did not base its decision on any important factual error.

[9] The Claimant says that he was not aware of any time limit to change a retirement pension to a disability pension. Unfortunately, this does not point to the General Division having made any error. The appeal cannot succeed on this basis.

[10] The Claimant also says that his disability pension application was delayed because he was waiting for a medical diagnosis for his condition, and his health was not good. While this is understandable, it does not point to the General Division having made an error. It also does not suggest that the Claimant was incapable of forming or expressing an intention to make the application. The appeal cannot succeed on this basis.

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<sup>2</sup>This paraphrases the grounds of appeal set out in s. 58(1) of the *Department of Employment and Social Development Act*

[11] The Claimant, finally, says that he did not receive any retirement pension payment until January 2019. However, the General Division considered this. The decision correctly states that the *Canada Pension Plan* does not refer to when a claimant actually receives pension payments when it sets the time limit for cancelling a retirement pension in favour of a disability pension, but when the retirement pension becomes payable.<sup>3</sup> The repetition of this argument does not point to the General Division having made an error.

[12] The General Division decision correctly states that the Tribunal cannot make decisions on compassionate grounds. It must follow the letter of the law.<sup>4</sup> The *Canada Pension Plan* says that a retirement pension cannot be replaced by a disability pension if the application for the disability pension is made more than 15 months after the retirement pension begins to be payable.<sup>5</sup> The Claimant's application was made more than 15 months after the retirement pension became payable. The General Division made no error in law.

[13] Nothing suggests that the General Division failed to provide a fair process.

## CONCLUSION

[14] The appeal is must be dismissed for these reasons.

Valerie Hazlett Parker  
Member, Appeal Division

HEARD ON:	
METHOD OF PROCEEDING:	On the Record
SUBMISSIONS:	D. S., Appellant

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<sup>3</sup> General Division decision at paras. 14, 15

<sup>4</sup> General Division decision at para. 16

<sup>5</sup> General Division decision at para. 8