



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *AF v Minister of Employment and Social Development*, 2020 SST 1057

Tribunal File Number: AD-20-804

BETWEEN:

**A. F.**

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: Kate Sellar

DATE OF DECISION: December 16, 2020

## DECISION AND REASONS

### DECISION

[1] I dismiss the appeal. The General Division did not make an error by summarily dismissing the Claimant's appeal. These reasons explain why.

### OVERVIEW

[2] A. F. (the Claimant) was receiving a disability pension under the *Canada Pension Plan* (CPP). When he turned 65, the Minister converted his disability pension to a retirement pension.

[3] The Claimant asked the Minister to reconsider the decision to convert his pension to a retirement pension. The Minister maintained its decision. The Claimant appealed to the General Division of this Tribunal. The General Division summarily dismissed the appeal. That means that the General Division found that the Claimant's appeal had no reasonable chance of success, and dismissed it without a hearing.<sup>1</sup>

[4] I must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) that would justify allowing the appeal.

[5] The Claimant has not proven that the General Division made an error under the DESDA. I dismiss the appeal.

### PRELIMINARY MATTERS

[6] Once a Claimant files an appeal of a summary dismissal to the Appeal Division, they have 45 days to provide written arguments to the Tribunal in support of the appeal. The Tribunal received the Claimant's appeal on October 7, 2020. The Claimant provided additional information on October 10, 2020. On October 30, 2020, the Minister confirmed it would not be providing submissions because the Claimant had not raised any reason (ground) of appeal. On November 10, 2020, the Claimant asked for an extension of time to provide more arguments. In

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<sup>1</sup> The Federal Court applied that "reasonable chance of success" standard in a case called *Miter v Canada (Attorney General)*, 2017 FC 262.

a follow up call with Tribunal staff, the Claimant stated that she might need until January 2021 or after January to respond.

[7] In light of all the circumstances, I exercised my discretion to give the Claimant until December 14, 2020 to provide any further arguments about how the General Division may have made an error. In the letter granting the extension, I explained that the issue I have to decide is whether the General Division made an error by summarily dismissing the appeal. The Tribunal did not received any further argument from the Claimant and the time for providing this material has now passed.

## ISSUE

[8] Did the General Division member make an error by summarily dismissing the Claimant's appeal?

## ANALYSIS

### **Reviewing General Division Decisions to Summarily Dismiss**

[9] The General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.<sup>2</sup> The question the Tribunal must answer is whether it is plain and obvious on the record that the appeal is bound to fail. The question is **not** whether the Tribunal must dismiss the appeal after considering the facts, the case law, and the parties' arguments. Instead, the question is whether the appeal is destined to fail regardless of the evidence or arguments that the appellant might provide at a hearing.<sup>3</sup>

[10] The Appeal Division does not provide an opportunity for the parties to re-argue their case in full. Instead, the Appeal Division reviews the General Division's decision to decide if it contains errors. That review is based on the wording of the DESDA, which sets out the errors (or grounds of appeal) that the Appeal Division can address.<sup>4</sup> The DESDA describes three types of errors that the Appeal Division can address: errors of fact, errors of law, and errors made because

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<sup>2</sup> DESDA, s 53(1); see also the Federal Court's decision in *Miter v Canada (Attorney General)*, 2017 FC 262.

<sup>3</sup> This is described in a case called *AZ v Minister of Employment and Social Development*, 2018 SST 298.

<sup>4</sup> The Federal Court of Appeal explained this in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.

the General Division failed to provide a fair process (or decided something it did not have the power to decide).<sup>5</sup>

### **No Error by Summarily Dismissing the Appeal**

[11] The General Division did not make an error under the DESDA by summarily dismissing the Claimant's appeal.

[12] The General Division explained that to be eligible for a CPP disability pension you must:

- be under 65 years old,
- not be receiving a CPP retirement pension,
- be disabled, and
- have made valid contributions to the CPP for not less than the minimum qualifying period.<sup>6</sup>

[13] The CPP says that the Minister had to stop paying a disability pension to the Claimant in the month he reached 65 years old. The General Division stated that the Claimant received the disability pension until he turned 65 years old, and that he was considered (deemed) to have applied for the retirement pension in the same month as he turned 65, in June 2019. The CPP pension started the following month.

[14] The Claimant argues that the General Division made an error. The Claimant has clarified at the Appeal Division that he is not challenging the existence of the rule that means he is now receiving a retirement pension instead of a disability pension. He is appealing the fact that the monthly amount he receives because of that change is \$400 lower than what he used to receive.<sup>7</sup>

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<sup>5</sup> DESDA, s 58(1).

<sup>6</sup> General Division decision, para 2, quoting from the *Canada Pension Plan*, s 44(1)(b).

<sup>7</sup> AD1-7.

[15] The Minister argues that the Claimant has not raised reason for appealing that I can address, so they are not providing any further arguments at the Appeal Division.<sup>8</sup>

[16] In my view, the General Division did not make an error by summarily dismissing the Claimant's appeal. The Claimant's appeal was bound to fail regardless of what he argued at the General Division. There was no debate about the fact that the law requires the Minister to switch the Claimant from a disability pension to a retirement pension when he turned 65. There was no debate about when the Claimant turned 65. The Minister applied the law. As a result, when the Claimant turned 65 years old, he stopped receiving the disability pension and he started receiving the retirement pension. That approach was mandatory in this situation.

[17] The change had a negative impact on the Claimant's monthly income. The Claimant has disabilities. However, even if the General Division had made an error, I do not have the power, based on compassionate grounds, to increase the monthly amount of the Claimant's CPP retirement pension to the CPP disability pension amount that he used to receive. I have reviewed the record. The General Division did not ignore or misunderstand the evidence in this case.<sup>9</sup>

## CONCLUSION

[18] I dismiss the appeal.

Kate Sellar  
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
REPRESENTATIVES:	A.F., Appellant M. F., Representative for the Appellant Jordan Fine, Representative for the Respondent

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<sup>8</sup> AD3.

<sup>9</sup> Although the context was somewhat different, the Federal Court talked about the Appeal Division doing this kind of review in a decision called *Karadeolian v Canada (Attorney General)*, 2016 FC 615.