



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *VR v Minister of Employment and Social Development*, 2021 SST 133

Tribunal File Number: AD-21-89

BETWEEN:

V. R.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Kate Sellar

Date of Decision: April 1, 2021

DECISION AND REASONS

DECISION

[1] I dismiss the application for leave (permission) to appeal. These reasons explain why.

OVERVIEW

[2] V. R. (Claimant) was 69 years old when she applied for disability pension under the *Canada Pension Plan* (CPP) in January 2018. The Minister denied her application both initially and on reconsideration. The Minister explained that it cannot approve and pay a disability pension to anyone who is 65 or older. The Claimant appealed to this Tribunal.

[3] The General Division dismissed the Claimant's appeal, deciding that the Claimant was not eligible for the disability pension because of her age. The General Division also decided that the Claimant could not proceed with a claim that the Minister violated her *Charter* rights. The General Division gave the Claimant several chances to fix a problem with her *Charter* notice but the Claimant did not respond.

[4] The Claimant asks for leave (permission) to appeal the General Division's decision. I must decide whether it is arguable that the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) that would justify giving the Claimant permission to appeal.

[5] I dismiss the application for leave to appeal.

ISSUE

[6] Can it be argued that the General Division made an error that would justify giving the Claimant permission to appeal?

ANALYSIS

Reviewing General Division decisions

[7] The Appeal Division does not give the Claimant or the Minister a chance to re-argue their case again from the beginning. Instead, the Appeal Division reviews the General Division's decision to decide if it contains errors.

[8] That review is based on the wording of the DESDA, which sets out the "grounds of appeal." To grant the application for permission to appeal, I must find that it is arguable that the General Division made one of these types of errors:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided; or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.¹

[9] At the leave to appeal stage, a claimant must show that the appeal has a reasonable chance of success.² To meet this requirement, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.³

No arguable case that the General Division made an error

[10] There is no arguable case for an error by the General Division. The Claimant has not raised any argument about a possible error that has a reasonable chance of success.

[11] To be eligible for a disability pension, a claimant must have a severe and prolonged disability on or before the end of their minimum qualifying period.⁴ Even if a claimant meets that definition, the CPP disability pension is only payable to claimants until they turn 65 years old. The CPP does not allow people to collect a disability pension and a retirement pension at the

¹ DESDA, s 58(1).

² The Federal Court of Appeal explained this in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.

³ DESDA, s 58(2).

⁴ *Canada Pension Plan*, s 42(2).

same time.⁵ Also, the CPP also provides that a claimant can be found to be disabled no more than 15 months before the Minister receives the disability application (I'll call that the "15-month rule").⁶

[12] The General Division explained that the Claimant turned 65 years old in September 2013. She did not apply for a disability pension until January 2018. Given when the Claimant applied, the earliest a disability pension can be payable under the 15-month rule would be February 2017. The CPP disability pension is payable only until a Claimant turns 65. The Claimant was 68 years old in February 2017, so the Minister cannot approve a disability pension under the CPP (even if she were disabled) because the Claimant was over 65.⁷

[13] The Claimant seems to argue that up until the age of 65, the CPP allows for disability benefits, and that after the age of 65, the CPP allows for a disability pension. She argues that she applied for the disability pension when she was over 65 on the advice of Service Canada.⁸ It seems that she would like the Tribunal to exercise a power to grant her the disability pension even though she was over 65 because she says she meets the other criteria for a pension.

[14] In my view, there is no arguable case that the General Division made an error. The Claimant was not entitled to a disability pension due to her age. She was also well over 65 years old both when she applied for the pension, and even 15 months before that. The law does not provide any option to make an exception for the Claimant: the Minister cannot pay a disability pension when a person is over 65.

[15] I have reviewed the Claimant's tribunal file. There is no evidence that the General Division ignored or misconstrued the evidence.⁹

[16] As a final note, the General Division decided that the Claimant could not proceed with a Charter challenge about any possible discrimination. The General Division explained that if the Claimant challenged any part of the *Canada Pension Plan* under the Charter, she needed to

⁵ *Canada Pension Plan*, s 41(1)(b).

⁶ *Canada Pension Plan*, s 42(2)(b).

⁷ General Division decision, para 17.

⁸ AD1-2

⁹ This review is consistent with the Federal Court's decision in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

provide a notice that explained what part (or provision) she was challenging, and any arguments in support of the issue she raised.¹⁰ The General Division describes the many steps the Tribunal took to communicate with the Claimant about what was required in the Charter notice, and then what was missing from the notice she provided.¹¹ The Charter notice was missing the part of the law that the Claimant was challenging – the specific provision of the CPP that the Claimant alleges infringes her Charter rights. The General Division states that the notice must state this specifically.¹²

[17] The Claimant did not make any arguments about whether the General Division made an error by not allowing the Charter aspect of her case to go ahead.

[18] I am satisfied that there is no arguable case that the General Division made any error in response to the Claimant's incomplete Charter notice. The General Division decided that the Claimant could not raise any constitutional issues in the appeal because her Charter notice did not name the specific part of the law that the Claimant was challenging.

[19] In all the circumstances here, I cannot say that the General Division made an error. The Federal Court of Appeal did confirm what a Charter notice ought to cover. The General Division applied that decision as it is required to do. The Claimant had multiple chances to provide the information the General Division asked for, or to contact the Tribunal if she did not understand the requests.¹³

¹⁰ General Division decision, para 1 explains that the *Social Security Tribunal Regulations*, s 20(1)(a) explains what is required for a Charter argument notice.

¹¹ General Division decision, paras 6 to 12.

¹² The Federal Court requires this specifically in a case called *Langlois v Canada (Attorney General)*, 2018 FC 1108, para 13.

¹³ I'm satisfied this situation is different from *JN v Minister of Employment and Social Development*, 2020 SST 860, in which the Appeal Division did find that the General Division failed to provide fair process. Here, the Claimant has had every opportunity to correct the specific aspect of the *Charter* notice that was incomplete, but she did not respond. She did not raise the issue at the Appeal Division either.

CONCLUSION

[20] I dismiss the application for leave to appeal.

Kate Sellar
Member, Appeal Division

REPRESENTATIVE:	V. R., self-represented
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