



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. J. v. Minister of Employment and Social Development*, 2016 SSTGDIS 83

Tribunal File Number: GP-15-900

BETWEEN:

R. J.

Appellant

and

**Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)**

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Shane Parker

DATE OF DECISION: October 17, 2016

REASONS AND DECISION

BACKGROUND

[1] The Appellant applied for an Old Age Security (OAS) pension. His application was received on April 5, 2013 (GD2-13). In his application, he expressed the desire that benefits begin in July 2013, the month he reached the required age of 65 (GD2-13 to 14). The application was granted, the Appellant was awarded a full OAS pension, and payment began in August 2013, the month following his 65th birthday (GD2-16). According to the Respondent, the first cheque was sent to the Appellant on August 28, 2013 (GD5-5). By letter dated February 26, 2014 the Appellant requested that the Respondent defer his OAS benefits until further notice (the “request to defer” at GD2-7). The request to defer does not bear a “received” stamp confirming it was received by the Respondent; however, the Respondent admits to receiving it on March 4, 2014 in its March 18, 2014 letter. In that letter, the Respondent denied the Appellant’s request to cancel his OAS benefits in favour of deferral, stating that the cancellation request (request to defer) was received outside the prescribed time, which was six months after the day payment of the pension was first issued (GD2-17). On January 6, 2015 the Respondent maintained the denial for the same reason expressed in its March 18, 2014 decision. The January 6, 2015 letter also stated “[w]e have received your reconsideration letter...” and that “these situations are not subject to appeal.” (GD2-12)

[2] The Appellant appealed the Respondent’s January 6, 2015 decision to the Tribunal’s General Division. His Notice of Appeal was received by the Tribunal on March 4, 2015 (GD1-4 to 6). On July 5, 2016 the Tribunal sent a letter notifying the Appellant of its intention to summarily dismiss the appeal (GD0). On July 28, 2016 the Appellant responded to the notice of intent letter (GD4). The Respondent filed a written submission on August 5, 2016 (GD5). On August 19, 2016 the Tribunal requested clarification from the Respondent regarding its January 6, 2015 decision and submissions regarding the Tribunal’s jurisdiction (GD6). The Respondent filed a response on August 26, 2016 (GD7). The Appellant in turn responded on October 3, 2016 (GD9).

ISSUE

[3] The Tribunal must decide whether the appeal should be summarily dismissed.

SUBMISSIONS

The Appellant's position (GD4 and GD9)

[4] The Appellant submits that “the key issue” is whether or not he requested a deferral of his OAS benefits on time. He asserts that he made the request on February 28, 2014, when he hand delivered it to the North York Service Canada Centre.

[5] The Appellant further submits that on February 28, 2014 he was assured by a Respondent agent that he filed his request on time. This same agent advised that the request would be sent to the Scarborough office by inter-office courier. The fact that the request was received by the Respondent's Scarborough office on March 4, 2014 corroborates this account.

[6] The Appellant argued that should the Tribunal not have jurisdiction over this matter, then he seeks to pursue recourse before the appropriate forum.

[7] Finally, the Appellant requested production of documents from the Respondent pertaining to its date-stamping policy of items transferred inter-office; the time and date items were delivered to its North York Service Canada Office the afternoon of February 28, 2014 [...]; confirmation that his request to defer was received at the Scarborough Service Canada Office by inter-office delivery from North York; and a transcript of its Information Technology Renewal Delivery System notes relating to his file.

The Respondent's position (GD5 and GD7)

[8] The Respondent submits that the request to defer was not made on time. The Respondent denies that the Appellant hand delivered his request to its North York office on February 28, 2014. The Respondent further denies that any of its agents advised him that he submitted his request on time. The Respondent contends that there is “no indication that the appellant was given erroneous advice regarding the deadline ...”

[9] Finally, the Respondent submits that the Tribunal does not have jurisdiction over this matter because its decision to deny the Appellant's request to defer is not a decision pursuant to section 27.1 of the OAS Act.

LAW AND ANALYSIS

[10] Subsection 53(1) of the *Department of Employment and Social Development Act* states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success.

[11] Section 22 of the *Social Security Tribunal Regulations* (SST Regulations) states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions. As stated above, such notice was provided and submissions were received by the parties.

[12] Section 2 of the OAS Act defines “Minister” as the Respondent in this appeal:

Minister means the Minister of Employment and Social Development

[13] Section 2 of the OAS Act defines “pensioner” as the Appellant in this appeal:

pensioner means a person whose application for a pension has been approved

[14] Subsection 9.3(1) of the OAS Act provides that a pensioner (in this case the Appellant) “may, in the prescribed manner and within the prescribed time after payment of a pension has commenced, request cancellation of that pension.” The prescribed manner and time referred to in this section are explained in subsection 26.1(1) of the OAS Regulations as a written request to the Respondent no later than six months after the day on which payment of the pension begins:

26.1 (1) For the purposes of subsection 9.3(1) of the Act, a request for cancellation of a pension shall be made to the Minister in writing no later than six months after the day on which payment of the pension begins.

[15] An application for an OAS pension is deemed to be made when the application form “is received by the Minister” pursuant to subsection 3(2) of the OAS Regulations. However, there is no “deeming” provision pertaining to when a request to cancel a pension is received, just that it must be “made in writing” no later than 6 months after payment began. While it is arguable

that the Appellant made his request to cancel in writing within the prescribed timeframe, it is beyond the Tribunal's jurisdiction to adjudicate that dispute, for the reasons explained next.

[16] Sections 27.1 and 28 of the OAS Act govern what kinds of disputes can be adjudicated by the Tribunal.

[17] Subsection 27.1(1) of the OAS Act states that a person who is dissatisfied with a decision that no benefit may be paid, or regarding the amount of benefit to be paid, can request the Respondent to reconsider that decision. The deadline to request this reconsideration is ninety (90) days after the person is notified of the decision in writing.

[18] Section 28 of the OAS Act states that a person who is dissatisfied with the Respondent's decision under section 27.1 may appeal that decision to the Tribunal.

[19] In *Canada (Attorney General) v. Bannerman*, 2003 FCT 208, the Federal Court confirmed that a request for reconsideration under subsection 27.1(1) and the decision on the request for reconsideration are conditions precedent to a right of appeal to a Review Tribunal.

[20] In the present appeal, the crux of the dispute between the parties is the Respondent's refusal to cancel and defer the Appellant's OAS pension. The Appellant maintains that he met the requirements to elect to defer his pension. He argues that it is logical that he submitted his request on time given that it was admittedly received at the Respondent's Scarborough office just days after he left it with the North York office (GD1-2). The Respondent disputes this, contending that the Appellant submitted the wrong form (an unrelated CPT30 form intended for the Canada Revenue Agency). The Respondent further submitted that there is contradictory, questionable, and insufficient evidence that the request was made within the prescribed time (GD5). The parties presented competing accounts of advice given by a Respondent official to the Appellant regarding the timing of the request to cancel/defer OAS benefits (GD2-8; GD1-2; GD5).

[21] Although there are different views as to whether the request to cancel/defer was submitted on time, subsection 27.1(1) of the OAS Act is not engaged because the dispute is not about a decision that "no benefit may be paid" or the "amount of benefit to be paid." The Respondent in fact decided to award the Appellant a full pension. The decision to award and the

decision regarding the amount of the pension are uncontested. Rather, the dispute centres ultimately on the timing of payment of the pension. As such, this is not a decision made pursuant to section 27.1(2) of the OAS Act. Since it is not a section 27.1 decision, section 28 appeal rights to the Tribunal are not engaged. As such, the dispute is not within the Tribunal's jurisdiction.

[22] Section 32 of the OAS Act pertains to erroneous advice or administrative error in the administration of the OAS Act. It empowers the Respondent (not the Tribunal) to investigate and remedy such matters. However, for the same reasons above, it is unclear that this provision is engaged because it specifically focuses on the denial of benefits or a portion of benefits. The full provision reads as follows:

32 Where the Minister is satisfied that, as a result of erroneous advice or administrative error in the administration of this Act, any person has been denied a benefit , or a portion of a benefit, to which that person would have been entitled under this Act, the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the erroneous advice not been given or the administrative error not been made.

[underlining added here]

[23] In the event the Respondent has conducted a section 32 investigation, as its submission in GD5 appears to suggest, and the Appellant is dissatisfied with the decision, the only remedy available to the Appellant is to apply to the Federal Court for judicial review of the Minister's decision (*Canada (Minister of Human Resources Development), v. Tucker*, 2003 FCA 278).

[24] The evidence the Appellant requests from the Respondent would appear to relate to a section 32 proceeding. In any event, the Tribunal does not have the authority to compel the Respondent to produce this evidence because, again, section 27.1 of the OAS Act is not engaged in this case. Section 26 of the Tribunal Regulations lists the specific documents the Respondent must file with the Tribunal after receiving a copy of the appeal:

- (a) a copy of the application that gave rise to the decision being appealed;
- (b) if applicable, the information relating to the marriage that is referred to in subsection 54(2) of the Canada Pension Plan Regulations;

(c) a copy of any notification given in accordance with section 46 or 46.1 of the Canada Pension Plan Regulations;

(d) a copy of any notification given in accordance with subsection 60(7) of the Canada Pension Plan or section 16 or 24 of the Old Age Security Act;

(e) a copy of the request made to the Minister for a reconsideration under subsection 81(1) of the Canada Pension Plan **or subsection 27.1(1) of the Old Age Security Act;**
and

(f) a copy of the decision that was made under subsection 81(2) or (3) of the Canada Pension Plan **or subsection 27.1(2) of the Old Age Security Act and any documents relevant to the decision.** [emphasis added]

[25] Clearly, from subsections (e) and (f) above, section 27.1 must be engaged before the Respondent is statutorily bound to file “any documents relevant to the decision.”

[26] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the OAS Act and OAS Regulations, and the Tribunal Regulations.

[27] The Tribunal finds that it has no jurisdiction to adjudicate the dispute in this matter pursuant to subsection 27.1(1) of the OAS Act. The dispute between the parties does not relate to whether a benefit be paid or the amount of the benefit paid.

[28] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[29] The appeal is summarily dismissed.

Shane Parker
Member, General Division - Income Security