



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. P. v. Minister of Employment and Social Development*, 2017 SSTADIS 671

Tribunal File Number: AD-17-305

BETWEEN:

K. P.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: November 21, 2017

REASONS AND DECISION

DECISION

[1] The application requesting leave to appeal is refused.

OVERVIEW

[2] The Applicant, K. P., applied for and began receiving an Old Age Security pension in February 2014. He subsequently learned that he might be able to defer payment of the pension in exchange for a higher monthly amount. He immediately requested cancellation of his pension — in April 2015 — but, by then, he had passed the deadline by which he was required to cancel the pension.

[3] The General Division determined that it was unable to relax the legislative provisions of the *Old Age Security Act* and unable to allow the Applicant to defer payment of the pension. The Applicant now seeks leave to appeal the General Division's decision, on two grounds. I must consider whether the appeal has a reasonable chance of success on either of these grounds.

ISSUE

[4] The issue before me is whether the appeal has a reasonable chance of success on the basis that the General Division either had failed to observe a principle of natural justice or had based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

GROUND OF APPEAL

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[6] Before leave can be granted, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court of Canada endorsed this approach in *Tracey*.¹

ANALYSIS

[7] The Applicant claims that the Respondent notified 280,000 Canadians by letter that they were entitled to defer their pensions, but that somehow he had been missed and therefore was unaware that he could have sought a deferral. He argues that it is unfair that he is being treated differently from other Canadians and he maintains that he should be entitled to the same opportunities as other Canadians. He submits that this amounts to a breach of the principles of natural justice and to an erroneous finding of fact.

[8] To succeed on this ground, any alleged unfairness or error must be attributable to the General Division. This is because of the limited grounds and the language set out in paragraph 58(1)(a) of the DESDA, which provides that the only grounds of appeal are that “the General Division failed to observe a principle of natural justice [...]; the General Division erred in law [...]; or the General Division based its decision on an erroneous finding of fact [...]” (emphasis added). Although the Applicant suggests that the General Division failed to inform him of the deferment, in fact, the General Division had no role in informing him or any Canadians about the deferment. The Respondent, or more broadly, the Government of Canada, held this role.

¹ *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[9] The Applicant argues that he is being treated differently, but this presupposes that the Respondent held a duty to inform him, as well as other Canadians, about the opportunity to defer an Old Age Security pension. There was no duty on the Respondent to inform the Applicant or others of the opportunity to defer the pension.

[10] It is a well-known and widely accepted principle that ignorance of the law is not a defence and that it does not provide any excuse for a late application. Information regarding the availability of deferment of an Old Age Security pension was widely available at that time because the Government of Canada was proposing a sweeping overhaul of the Old Age Security pension to reflect societal changes, the most notable being raising the minimum age of entitlement to the pension from 65 to 67. The Applicant is unable to rely on the fact that he did not receive any notice of the deferment from the Respondent to make out a ground of appeal.

[11] The Applicant has not identified any errors on the part of the General Division, and I do not readily see any errors on the face of the record. For these reasons, I am not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[12] The application for leave to appeal is refused.

Janet Lew
Member, Appeal Division