



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *The Estate of F.D. v. Minister of Employment and Social Development*,  
2017 SSTADIS 732

Tribunal File Number: AD-17-910

BETWEEN:

**The Estate of F. D.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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

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Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: December 13, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] The deceased, F. D., began to receive an Old Age Security (OAS) pension and a Guaranteed Income Supplement (GIS) in 1988. She was single at that time and received these benefits on this basis. The deceased married in September 2000, and notified the government of her change in marital status. In 2010, the Respondent informed the deceased that it had overpaid her OAS and GIS benefits from the time she married until June 2009, since it had not changed its records to reflect her change in marital status. The Respondent upheld this decision on reconsideration. The deceased's estate (the Applicant) appealed the reconsideration decision to the Social Security Tribunal of Canada (Tribunal). On August 30, 2017, the Tribunal's General Division dismissed the appeal. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on November 30, 2017.

### ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs the operation of this Tribunal. According to subsections 56(1) and 58(3) of the DESD Act, an appeal to the Appeal Division may be brought only if leave to appeal is granted, and the Appeal Division must either grant or refuse leave to appeal.

[3] The only grounds of appeal available under the DESD Act are set out in subsection 58(1). They are that the General Division failed to observe a principle of natural justice, made an error of law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it. Subsection 58(2) states that leave to appeal is to be refused if the appeal has no reasonable chance of success.

[4] I must decide whether the Applicant has presented a ground of appeal under subsection 58(1) of the DESD Act that has a reasonable chance of success on appeal.

[5] The facts in this matter are not in dispute, and are summarized above. It is clear that the Respondent did not act diligently with respect to adjusting its records when notified of the deceased's change in marital status. For reasons not explained, the records were not adjusted for

approximately 10 years. When the deceased was notified of the overpayment that resulted from this, she acted immediately and requested that the Respondent reconsider its decision. Again, with no explanation, the Respondent did not respond for approximately five years. By then, the deceased had passed away, and now her estate (the Applicant) is left to resolve the matter.

[6] The Applicant does not dispute the facts. It contends that the Respondent did not meet its statutory obligation to act without delay with regard to this matter. Subsection 27.1(2) of the *Old Age Security Act* provides that the Respondent shall, without delay after receiving a request for reconsideration, make that decision. Clearly, it did not do so without delay in this case.

[7] I have great sympathy for the Applicant. However, the fact that the Respondent may not have met its obligation does not point to any ground of appeal under the DESD Act. This Tribunal has only the authority granted to it by the DESD Act. This does not include the ability to sanction the Respondent for not meeting its obligation to act without delay. This Tribunal is also unable to grant relief to a party based on fairness or extenuating circumstances.

[8] I have reviewed the General Division decision and the written record. I am satisfied that the General Division did not overlook or misconstrue any facts or make any erroneous findings of fact. I am also satisfied that it stated the law and applied it correctly to the facts. There is no suggestion that the General Division failed to observe a principle of natural justice.

## **CONCLUSION**

[9] The Application must be refused because the Applicant has not raised a ground of appeal under subsection 58(1) of the DESD Act that has a reasonable chance of success on appeal.

[10] The Respondent is, however, strongly encouraged to contact the Applicant to discuss how this matter might be resolved.

Valerie Hazlett Parker  
Member, Appeal Division