



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *L. S. v. Minister of Employment and Social Development*, 2018 SST 9

Tribunal File Number: AD-17-293

BETWEEN:

L. S.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: January 4, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal the February 3, 2017, decision of the General Division of the Social Security Tribunal of Canada is refused.

OVERVIEW

[2] The Applicant, L. S., requested an increase in her Old Age Security (OAS) pension, specifically, retroactive payment beyond the 11 months she received. The Respondent, the Minister of Employment and Social Development, denied her request because the Applicant requested a reconsideration more than seven years after the deadline.

[3] The Applicant argues that several administrative errors were made, and requests that her OAS pension be paid from the date on which she reached the age of 65, in 2003. She filed a pension application in May 2008, when she was 70 years old and was living abroad.

[4] The Applicant appealed the Respondent's decision to grant retroactivity of 11 months (and not back to 2003) and to deny her late reconsideration request. The General Division found that the Applicant is not entitled to an extension of time to file a request for reconsideration. In addition, she was granted the appropriate OAS pension benefit amounts, and the Tribunal cannot extend the period of retroactivity beyond what is set out in the legislation.

[5] In her application for leave to appeal, the Applicant submits that the General Division refused to exercise its jurisdiction. She cites administrative errors in the file and argues that the situation is contrary to the *Canadian Charter of Rights and Freedoms*, particularly the rights to information and to social measures.

[6] The appeal does not have a reasonable chance of success, because the Tribunal does not have powers beyond those granted to it by its home statute, and the General Division did not make a reviewable error.

ISSUE

[7] Could it be argued that the General Division erred by finding that the Applicant is not entitled to an extension of time to file a request for reconsideration more than seven years late?

ANALYSIS

[8] An applicant must seek leave to appeal a decision made by the General Division. The Appeal Division must either grant or refuse leave to appeal, and an appeal may be brought only if leave to appeal is granted.¹

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there a ground on which the appeal could succeed?²

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error.⁴ The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

Could it be argued that the General Division erred by finding that the Applicant is not entitled to an extension?

[11] According to the Applicant, the General Division should have exercised its jurisdiction and changed the Respondent's decision.

¹ *Department of Employment and Social Development Act* (DESDA) at subsections 56(1) and 58(3).

² *Osaj v. Canada (Attorney General)*, 2016 FC 115, at paragraph 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208, at paragraph 36; *Glover v. Canada (Attorney General)*, 2017 FC 363, at paragraph 22.

³ DESDA at subsection 58(2).

⁴ DESDA at subsection 58(1).

[12] However, on reading the General Division decision, I find that the General Division considered the evidence on file and did not overlook any relevant evidence.

[13] The General Division determined that the Respondent had not exercised its discretion in a judicial manner in refusing the late request for reconsideration. Therefore, it undertook its own assessment of the criteria relevant to an extension request.

[14] The Applicant is seeking a remedy that the Tribunal is not authorized to grant: greater retroactivity of her OAS pension.

[15] The General Division found that the Applicant had been granted the maximum retroactivity authorized by the law. It also found that even if there were administrative errors in the file, the Minister has the authority to take the actions it deems fair, but the Tribunal does not have the jurisdiction to review such a decision. I find that the General Division did not make any erroneous findings.

[16] Based on these findings and on the overriding consideration of whether granting an extension would be in the interest of justice,⁵ the Applicant is not entitled to an extension. The General Division exercised its discretion in a judicial manner in refusing to grant an extension.

[17] I have also examined the evidence on file. I see no indication that the General Division overlooked or misconstrued any important evidence. I am of the opinion that the General Division did not fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors of law or any erroneous findings of fact that the General Division made in a perverse or capricious manner or without regard for the evidence before it.

[18] Although the Applicant does not agree with the General Division's findings based on the above-mentioned evidence, the General Division did not make a reviewable error. The Tribunal cannot extend the period of retroactivity beyond what is set out in the legislation. It does not have this jurisdiction, and, therefore, it did not refuse to exercise its jurisdiction.

⁵ *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

[19] Although the Applicant referred to the *Canadian Charter of Rights and Freedoms*, she did not file a notice under section 20 of the *Social Security Tribunal Regulations* with the General Division or the Appeal Division. In addition, she confirmed that she is not challenging the constitutionality of the legislation.

[20] For these reasons, I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[21] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division