



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Minister of Employment and Social Development v. I. S.*, 2018 SST 384

Tribunal File Number: AD-18-42

BETWEEN:

**Minister of Employment and Social Development**

Applicant

and

**I. S.**

Respondent

---

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

---

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: April 6, 2018

## DECISION AND REASONS

### DECISION

[1] Leave to appeal is granted.

### OVERVIEW

[2] I. S. (Claimant) applied for benefits under the *Old Age Security Act* (OAS Act) in January 2015. The Minister of Employment and Social Development (Minister) approved the application and granted her 11 months of retroactive payment. The Claimant appealed the Minister's decision, claiming benefits retroactive to October 2012 when she first attended at a Service Canada Centre with an application for these benefits. The Social Security Tribunal's General Division allowed the Claimant's appeal and found that her application for Old Age Security (OAS) benefits was received in October 2012. Leave to appeal this decision is granted because the General Division may have erred regarding the date when the application was received.

### ISSUES

[3] Did the General Division have jurisdiction to decide that the Claimant's application was received in 2012?

[4] Did the General Division err in law when it decided that the Claimant's application was received in October 2012?

[5] Did the General Division base its decision on an erroneous finding of fact under the *Department of Employment and Social Development Act* (DESD Act) when it found that the Claimant's application was received in October 2012?

### ANALYSIS

[6] The DESD Act governs the Tribunal's operation. It provides only three grounds of appeal that can be considered, namely, that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in 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.<sup>1</sup> In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.<sup>2</sup> The Minister's arguments to be granted leave to appeal must be considered in this context.

### **Did the General Division err in law?**

[7] The Tribunal must follow decisions made by the Federal Court and the Federal Court of Appeal. In this case, the General Division refers to the *Vinet-Proulx* decision<sup>3</sup> that states that the Tribunal has only the authority set out in its legislation and no jurisdiction based on equity, and the *Larmet* decision,<sup>4</sup> which teaches that the tribunal has no inherent authority to authorize a benefit that an applicant is not entitled to receive. It is not clear, however, if the General Division applied these principles in its decision. The General Division decision is at odds with these principles. The appeal may therefore have a reasonable chance of success on the basis that the General Division erred in law.

### **Did the General Division exceed its jurisdiction?**

[8] The OAS Act also provides that, where an applicant attains the age of 65 before the date when the application is received, the approval of the application may be effective on an earlier date.<sup>5</sup> The Minister argues that the General Division has no authority to find that the Claimant's application was **received** approximately three years before it was given to a Service Canada representative. This legal authority is not specifically granted to the Tribunal. Because the Tribunal is a statutory tribunal, it only has the authority granted to it in the DESD Act. Therefore, the General Division may have exceeded its legal jurisdiction when it decided that the Claimant's application was received in 2012. The appeal also has a reasonable chance of success on this basis.

---

<sup>1</sup> DESD Act, s. 58(1).

<sup>2</sup> *Ibid.*, s. 58(2).

<sup>3</sup> *Canada (Attorney General) v. Vinet-Proulx*, 2007 FC 99.

<sup>4</sup> *Larmet v. Canada (Human Resources and Skills Development)*, 2012 FC 1406.

<sup>5</sup> OAS Act, s. 8(2).

**Other issues**

[9] The Claimant also argues that the General Division made other errors of law and based its decision on erroneous findings of fact with respect to its decision that the application was made in October 2012. However, I need not decide if the appeal may have a reasonable chance of success on these bases because I have found that it has a reasonable chance of success based on the grounds above.<sup>6</sup>

**CONCLUSION**

[10] Leave to appeal is granted.

[11] The parties are not restricted to the grounds of appeal considered above. It would be helpful if all parties addressed all of the grounds of appeal presented by the Minister in their written submissions.

[12] This decision to grant leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVE:	Laura Dalloo, Counsel for the Applicant
-----------------	---

---

<sup>6</sup> *Mette v. Canada (Attorney General)*, 2016 FCA 276.