Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *Minister of Employment and Social Development v. I. S.*, 2018 SST 789

Tribunal File Number: AD-18-42

BETWEEN:

Minister of Employment and Social Development

Appellant

and

I. S.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: August 8, 2018

DECISION AND REASONS

DECISION

[1] The appeal is allowed and the decision that the General Division should have given is given.

OVERVIEW

[2] I. S. (Claimant) reached 65 years of age in September 2012. She went to a Service Canada centre to apply for an Old Age Security (OAS) pension in October 2012. She completed an application form and handed it to the Service Canada staff member, who returned it to her after a discussion about it. The Claimant completed another OAS application form in January 2015 that Service Canada received and approved as of January 2015. The Claimant received retroactive OAS payments from February 2014. The Claimant seeks to have her OAS payments begin in October 2012, when she was first eligible to receive them.

[3] The Minister of Employment and Social Development refused the Claimant's request for further retroactive OAS payment to October 2012. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division allowed the appeal and recognized October 2012 as the month when the Minister received the application in the particular circumstances of this case. The Minister's appeal of this decision is allowed because the General Division's finding of fact that the application was received in October 2012 was erroneous and made in a perverse manner and because the General Division exceeded its jurisdiction by finding an exception to the *Old Age Security Act* (OAS Act) to permit further retroactive payment to the Claimant.

ISSUES

[4] Did the General Division base its decision on an erroneous finding of fact made in a perverse or capricious manner when it found as fact that the Claimant's OAS application was received in October 2012?

[5] Did the General Division exceed its jurisdiction when it decided that the Claimant's application was received in October 2012?

[6] Did the General Division provide insufficient reasons for its decision?

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

ANALYSIS

[8] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that the Appeal Division can consider. They are 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.[1] The Minister's arguments that the General Division made each of these errors are examined below.

Issue 1: Erroneous finding of fact

[9] One ground of appeal under the DESD Act is that the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it. For an appeal to succeed on this basis, three criteria must be satisfied. The finding of fact must be erroneous (made in error), it must have been made in a perverse or capricious manner or without regard for the material before the General Division, and the decision must be based on this finding of fact.[2] The DESD Act does not define the terms "perverse" or "capricious." However, court decisions that considered the *Federal Courts Act*—which has the same wording—provide guidance on this matter. In that context, "perverse" has been found to mean "willfully going contrary to the evidence." "Capricious" has been defined as being "so irregular as to appear to be ungoverned by law."[3] Finally, a finding of fact for which there is no evidence before the Tribunal will be set aside because it has been made without regard for the material before the Tribunal. I accept that these definitions apply to consideration of the DESD Act.

[10] The basic facts of this appeal are not in dispute:

---

[1] DESD Act s. 58(1).
[2] *Rahal v. Canada (Citizenship and Immigration)*, 2012 FC 319.
[3] *Ibid*.

- The Claimant reached 65 years of age in September 2012.
- The Claimant visited a Service Canada Centre in October 2012. While she was there, she discussed her OAS application with a Service Canada staff member.
- After this discussion, the Service Canada staff member returned the Claimant's OAS application to her. She took it home and placed it in a file.
- The Claimant completed another OAS application in January 2015, which she left with Service Canada staff.
- This application was approved, and the Claimant began to receive OAS payments as of February 2014.[4]

The Claimant confirmed these facts in her testimony before the General Division, and this is summarized in the decision.[5] However, in spite of this evidence, the General Division found as fact that the Minister received the Claimant's OAS application in October 2012.[6] This finding of fact was perverse.

[11] The OAS Act states that no pension may be paid to a person unless that person is qualified, an application has been made, and the application is approved.[7] The *Old Age Security Regulations* (OAS Regulations) state that an application is deemed to have been made when a complete application form is received by the Minister.[8] The term "received" is not defined in the OAS Act or OAS Regulations. Black's Law Dictionary defines "receive" as "to take into possession and control; accept custody of; collect."[9] There was no evidence that the Minister took into possession, collected, or controlled the Claimant's application in 2012. The evidence was undisputed that the Claimant kept her 2012 application after speaking with Service Canada staff. Therefore, the finding of fact that the application was received at that time is contrary to the evidence and perverse. The appeal succeeds on this basis.

---

[4] Subsection 5(2) of the OAS provides that when a person reaches 65, their application shall be effective as of the latest of one year before the application was received, the day on which the applicant became qualified to receive OAS, and the month immediately before the date specified in writing by the applicant.
[5] General Division decision paras. 6–8.
[6] *Ibid*. para. 34.
[7] OAS Act s. 5(1).
[8] OAS Regulations s. 3(2).
[9] Black's Law Dictionary, 6th Ed. 1990.

Issue 2: Jurisdictional error

[12] Another ground of appeal under the DESD Act is that the General Division made an error by acting beyond its jurisdiction. The General Division decision correctly states that the Tribunal is created by statute and has only the legal jurisdiction given to it by statute. It has no inherent jurisdiction to authorize a benefit that a claimant is not entitled to receive.[10] The General Division also considered some of the OAS Act provisions and summarized some relevant cases.[11] It relied on the Federal Court's decision in *Larmet.*[12] That case was about an appeal from a decision that refused to award a claimant OAS benefits that would have been payable but for a mistake on her application. In that case, the Review Tribunal based its decision on the fact that Ms. Larmet would have been able to withdraw her application if she wanted to correct it prior to the benefits being paid to her. The decision turned on an ambiguity in the legislation regarding when a claimant may withdraw an OAS application.

[13] In this case, the General Division concluded that the Claimant had also made a mistake by taking the 2012 application home with her after visiting the Service Canada Centre and that this is a mistake that can be rectified.[13] The General Division "rectified" the mistake by finding that the application was made in October 2012, based on the Claimant's stated intention to apply at that time.

[14] This decision effectively carved out an exception to the OAS Act requirements that the Claimant must complete an application and that the Minister must receive it before it can be approved. The General Division has no jurisdiction to do this. It cannot make exceptions to legislated requirements. The General Division therefore exceeded its jurisdiction. The appeal succeeds on this basis also.

[15] In addition, the OAS Act states that an application must be made and approved for this benefit to be payable. A claimant's intention to apply is irrelevant. Therefore, the General Division also erred when it relied on the Claimant's evidence that she intended to apply for OAS

[10] General Division decision para. 34.
[11] *Ibid*. paras. 20, 21, 23–32.
[12] *Larmet v. Canada (Human Resources and Skills Development)*, 2012 FC 1406.
[13] General Division decision para. 29.

benefits in October 2012 in the absence of evidence that the Minister had received her application at that time.

Issue 3: Sufficiency of Reasons

[16] In addition, the General Division must give written reasons for its decision.[14] The reasons for a decision must be sufficient for the reader to know what decision has been made and why the decision was made. They must also deal with inconsistencies in the evidence and explain why some contradictory evidence was favoured over other evidence.[15] The General Division's reasons for its decision are insufficient. The decision finds that the Claimant's application was received in 2012, but gives no explanation for ignoring the clear evidence that the Claimant applied in 2015, including her testimony, the stamped date on the application indicating receipt in 2015, and letters to the Claimant that confirmed this.[16] As a result, the reader cannot understand why the General Division made the decision that it did. This is also an error in law. The appeal must be allowed on this basis as well.

Issue 4: Error in law

[17] Another ground of appeal under the DESD Act is that the General Division made an error in law. The Minister argues that the General Division erred in law because it did not consider the legal issue that was before it. The Minister argues that the Claimant disagreed with the Minister's decision regarding the start date of her OAS benefits. Therefore, the General Division should have concerned itself with when the OAS payments should have started; instead, it focussed on when the application was received.

[18] While this may be so, the start date of the OAS is dependent on when the Claimant qualified for the benefit , made the appropriate application and when the application was approved. In this case, the answers to these issues are dependent on when the Minister received the Claimant's application. Therefore, the General Division did not make an error in law by focussing on when the Minister received the Claimant's application.

---

[14] DESD Act s. 54(2).
[15] *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.
[16] For example, GD2-26.

[19] Finally, the Claimant contends that she was given incorrect advice when she went to the Service Canada Centre in 2012 and in 2015 and that this should be remedied. This is not something that the Tribunal can do. The Tribunal has no authority to grant a remedy for erroneous advice that Service Canada staff may have given.

REMEDY

[20] The appeal is allowed for the reasons set out above.

[21] The DESD Act sets out what remedies the Appeal Division can give when an appeal is allowed.[17] In this case, it is appropriate that I give the decision that the General Division should have given. The Tribunal record is complete. The essential facts are not in dispute. The General Division held an oral hearing and I have listened to the recording of it. Evidence and submissions have been received on all of the issues.

[22] The facts are undisputed. The Claimant turned 65 in September 2012 and qualified at that time for OAS benefits. Although she visited Service Canada in October 2012, she did not make an application for the benefit at that time. An application is made when it is received by the Minister.[18] The Minister received the Claimant's application on January 16, 2015.[19] The application was approved, and the Claimant was given 11 months retroactivity in her payments. This is the maximum allowed under the legislation.

[23] I am sympathetic to the Claimant's circumstances. However, the Tribunal cannot make decisions based on a claimant's financial need or extenuating circumstances. Decisions must be based on the law and the evidence.

[17] DESD Act s. 59(1).
[18] OAS Regulations s. 3(2).
[19] GD2-18.

[24] Therefore, the General Division decision is quashed.

[25] The Claimant's appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	August 2, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	I. S., Claimant Laura Dalloo, Counsel for the Appellant