



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. O. v. Minister of Employment and Social Development*, 2018 SST 825

Tribunal File Number: AD-18-433

BETWEEN:

M. O.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: August 21, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

[2] M. O. (Claimant) applied for an Allowance for the Survivor benefit under the *Old Age Security Act* (OAS Act) approximately four years after her husband passed away from cancer. The Minister of Employment and Social Development refused the application because the Claimant applied for the benefit after the deadline. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division summarily dismissed the Claimant's appeal. It decided that the appeal did not have a reasonable chance of success because the Claimant did not qualify for the benefit under the legislation and it could not grant any relief on compassionate grounds. The Claimant's appeal from this decision is dismissed because the Appeal Division also cannot grant her any relief on compassionate grounds.

PRELIMINARY MATTER

[3] The appeal was decided on the basis of the documents filed with the Tribunal, after considering the following:

- a) The legal issue to be decided is straightforward;
- b) There are no gaps in the information filed with the Tribunal; and
- c) The Claimant stated that she had no submissions to file on the appeal.

ANALYSIS

[4] 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 So, to

¹ DESD Act s. 58(1)

succeed on this appeal, the Claimant must prove that the General Division made one of these errors.

[5] The Claimant states the following in the appeal documents she filed with the Tribunal:

The Appeal is not to vary legal requirements set out in the OAS. The [Claimant] is asking for compassionate exception from the stiff, bureaucratic, inhuman and discriminating application of the rules which Service Canada used in her specific case. They didn't show ANY appreciation of her AGE, MINORITY AND LANGUAGE DISABILITIES.²
[emphasis in original]

[6] The Claimant does not contest any of the facts. She does not allege that the General Division made an error in law or in jurisdiction or that it failed to observe the principles of natural justice. I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. It made no error in law. The decision correctly states that the Allowance for the Survivor cannot be paid to a claimant who is over the age of 65.³ The Claimant was over 65 when she applied for this benefit. The OAS Act permits 11 months of retroactive payment of this benefit to claimants who qualify for it, but the Claimant was over 65 11 months before she applied.

[7] The Tribunal is created by statute. As a result, it has only the legal authority granted to it by the legislation, namely the DESD Act. The DESD Act does not permit the Tribunal to grant any relief to a claimant based on their personal circumstances, including age, language ability, knowledge of the legislation, or affiliation with a cultural group. The legislation does not give the Tribunal any authority to grant relief on compassionate grounds either.

[8] I am sympathetic to the Claimant's circumstances. However, I cannot intervene in the General Division decision on this basis.

² GD6

³ OAS Act s. 21(1)(a)

CONCLUSION

[9] The appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the written record
SUBMISSIONS:	M. O., Appellant