



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. K. v Minister of Employment and Social Development*, 2018 SST 1045

Tribunal File Number: GP-16-4020

BETWEEN:

R. K.

Appellant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Date of decision: September 17, 2018

DECISION

[1] The appeal is dismissed. The Appellant did not give notice to withdraw his *Old Age Security Act* (OAS Act) application, or request to cancel his OAS pension, within the applicable time limits.

OVERVIEW

[2] The Appellant turned 65 in July 2013. He had applied for an OAS pension several months before this, and payment was approved to begin in August 2013¹. This appeal concerns the Appellant's effort to stop receiving the pension so that he could receive a higher amount later. This effort began in August 2013, and is discussed in more detail below.

[3] Most recently, in April 2016 the Appellant made a written request to "disregard my original application, postpone or make any other adjustment required" to allow him to receive a full OAS pension at age 70 with the appropriate increase². The Minister viewed this as a request by the Appellant to cancel his OAS pension. The request was denied because it was made more than six months after payment began³. The decision was maintained on reconsideration; with the Minister clarifying that the Appellant could not withdraw the application either⁴. The Appellant appealed to the Social Security Tribunal.

ISSUE

[4] Can the Appellant withdraw his OAS application, or cancel his OAS pension?

ANALYSIS

[5] I have a great deal of sympathy for the Appellant. His efforts to defer payment of his pension were hampered by confusion over the process for doing this, the use of imprecise language, and the Minister's failure to follow-up with him to ensure he understood what he was

¹ GD2-40-44

² GD2-25

³ GD2-24

⁴ GD2-4

doing. However, on the facts I cannot find that he requested either a withdrawal of his OAS application, or a cancellation of his OAS pension, within the applicable time limits.

Methods to stop receiving an OAS pension

[6] Before March 2013, a person who had applied for an OAS pension but no longer wanted to receive it could either withdraw the application before the first payment⁵; or ask that the pension cease to be payable⁶. A withdrawn application is treated as if it had never been made; whereas a request to cease payment results in the pension being suspended until the person asks to have payment resume. Since OAS payments are taxed back and there is no benefit to receiving them above a certain income level, the advantage of ceasing payments was presumably to avoid being pushed into a higher tax bracket⁷.

[7] In July 2013 the OAS Act was amended to allow a person to defer receipt of the pension up to age 70. Each month the pension was deferred after age 65 would result in a .6% increase in the amount⁸. To allow people who had only recently started receiving their OAS pension to take advantage of this, as of March 2013 an OAS pension can be cancelled outright as long as a written request to cancel is received by the Minister within six months after payment of the pension begins. The application is then deemed never to have been made, and the person can apply later so as to receive an increased amount⁹.

Appellant's requests to defer his OAS pension

[8] In August 2013 the Appellant wrote to the Minister as follows¹⁰:

This is to request to defer my OAS immediately until further notice. Please confirm receipt and acceptance of this request. I understand that this request is not affecting in any way current or future benefits of my wife. . . .

⁵ OAS Act section 5.1

⁶ OAS Act section 9.1

⁷ *Larmet v. Canada (Human Resources and Skills Development)*, 2012 FC 1406

⁸ OAS Act section 7.1

⁹ OAS Act section 9.3; OAS Regulations subsection 26.1(1)

¹⁰ GD2-30

[9] The letter did not clearly state what the Appellant wanted to do. That he expressed a wish to defer payment suggests he wanted to either withdraw the application or cancel the pension outright. His payments were suspended that month, but no-one followed up to ask about his intentions until many months later¹¹.

[10] In January 2014, the Minister wrote to the Appellant to advise that his application could not be withdrawn because the first payment had already been made, but that “we may be able to cancel your pension”. He was asked to indicate on an attached statement if he wished to cancel the pension¹². The Appellant drew a line through the letter and the statement, and added the note “NA” to each. He wrote on the letter: “Called 29/Jan 2014 1-800-277-9914 Information/advised – this correspondence is a mistake; - disregard”¹³. The Appellant stated that he advised the Minister by phone that he did not want to cancel his pension; and that he wanted to withdraw it so he could receive the increased pension amount later. He stated that by marking the letter and statement as he did, he meant they did not apply to him “as I was looking for withdrawal and not cancellation”¹⁴.

Clarification attempts by the Minister

[11] The Minister appears to have no notes of a January 2014 phone call, but that does not mean it did not happen. Even so, it does not affect the outcome of this appeal. The Minister received the Appellant’s documents on February 7, 2014. In March, an attempt was made to contact the Appellant by phone to clarify what he wanted, but he could not be reached¹⁵. The Minister then wrote to the Appellant in March 2014 to advise it had reinstated his OAS pension, and that arrears of \$4407.37 for August 2013 to March 2014 would be paid to him soon after¹⁶. After March 2014, the Appellant continued to be paid an OAS pension each month, all of which was clawed back through the OAS recovery tax¹⁷.

¹¹ GD2-6

¹² GD2-28-29

¹³ GD2-28-29

¹⁴ GD7-1

¹⁵ GD2-27

¹⁶ GD2-26

¹⁷ GD2-10; GD7-1

[12] The Appellant did not reply to the Minister's March 2014 letter. He stated he did not do so at the time because he intended to later; and that he responded in April 2016, when he wrote the letter referred to above¹⁸.

The Appellant did not request withdrawal or cancellation as required by the legislation

[13] The OAS legislation requires a person to give written notice within certain time frames that he wishes to withdraw an OAS application, or cancel an OAS pension. These are distinct requests, and might also be confused with a request to cease payment of the pension. Therefore the person making the request must be clear about what it is he is asking for.

[14] The Appellant's initial request in August 2013 was not clear. He asked to "defer" his pension; not to withdraw the application, cancel the pension, or cease payment. The Minister correctly suspended payment so it could inquire further into the Appellant's intentions¹⁹. Ideally, the Minister would have contacted the Appellant sooner than January 2014. Ideally, the Minister would have made more of an effort to follow-up with the Appellant when he submitted the confusing response that he did in February 2014.

[15] However, the Appellant's wishes were clarified when he did not respond in a timely way to the Minister's letter of March 2014, which informed him that his OAS benefits would be reinstated as of August 2013. The most logical conclusion to draw from the Appellant's lack of response to this clear statement is that, whatever he intended in August 2013, he now wanted OAS benefits to be paid to him, even if they were being clawed back.

[16] The Appellant's request of April 2016 could not revive the earlier requests. It was a new request, made well beyond the time limits for withdrawal of an application (before the first payment commences)²⁰, or cancellation of the pension (within six months of payment commencing)²¹. As a result I cannot allow his appeal on that basis.

¹⁸ GD7-1

¹⁹ OAS Regulations subsection 26(1)

²⁰ OAS Act subsection 5.1(1)

²¹ OAS Act subsection 9.3(1); OAS Regulations subsection 26.1(1)

[17] Nor can I allow the appeal because the Appellant feels he is being treated unfairly or being denied on technicalities. The legislation contained the means by which the Appellant could defer payment of his OAS pension. That he did not do so is something I cannot help him with. I do not have authority to disregard the OAS Act and OAS Regulations for compassionate reasons or extenuating circumstances. The Minister may take remedial action where a person has been denied a benefit because of erroneous advice or administrative error²²; but this is a discretionary power belonging to the Minister, and I do not have authority to review a decision made under this provision²³.

CONCLUSION

[18] The appeal is dismissed.

Virginia Saunders
Member, General Division - Income Security

²² OAS Act section 32

²³ *Canada (Attorney General) v. Vinet-Proulx*, 2007 FC 99