



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. R. v. Minister of Employment and Social Development*, 2018 SST 1153

Tribunal File Number: AD-18-299

BETWEEN:

C. R.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: November 15, 2018

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant, C. R., applied for an Old Age Security (OAS) pension in September 2015. The Respondent, the Minister of Employment and Social Development, sent several letters asking for additional information, but the Appellant never responded, so the Minister denied his application. The Appellant asked the Minister to reconsider its initial decision, but the Minister denied his application a second time, again saying that several requests for information had gone unanswered.

[3] The Appellant then appealed the Minister's reconsideration decision to the Tribunal's General Division, but it found that his appeal was over a year late. As a result, the General Division concluded that it did not have the power to grant the extension of time that the Appellant needed for his file to be considered.

[4] The Appellant then requested leave to appeal the General Division decision to the Tribunal's Appeal Division, something I granted some weeks ago. The Minister now accepts that the General Division decision was based on an important error of fact, it proposes that I grant the extension of time that the General Division had initially denied, and it recommends that I send the matter back to the General Division to assess the Appellant's eligibility for an OAS pension.¹

[5] I have decided to accept the Minister's recommendations.

¹ AD3.

PRELIMINARY MATTERS

[6] I decided this appeal based on the documents and submissions that the parties had already filed because:

- a) the Minister's concession is a complete response to the General Division's decision refusing an extension of time;
- b) the proposed remedy is appropriate, given that the General Division has not yet assessed the Appellant's entitlement to an OAS pension; and
- c) section 3(1)(a) of the *Social Security Tribunal Regulations* directs me to conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

ISSUE

[7] Did the General Division base its decision on an error of fact when it concluded that the Appellant had received the Minister's reconsideration decision by July 2, 2016?

ANALYSIS

[8] The Minister's reconsideration decision is found in a letter to the Appellant dated June 22, 2016.² In order to challenge that decision, the Appellant had to file an appeal at the General Division level—including all of the necessary accompanying information—within 90 days of when he received the Minister's letter.³

[9] If the appeal was filed late, the General Division would have had the power to extend the time allowed for bringing an appeal, but only if the appeal was filed within a year of the day when the Appellant received the Minister's reconsideration decision.⁴

[10] In this case, the Appellant filed his complete notice of appeal on December 18, 2017. The main issue the General Division had to decide was when the Appellant received the Minister's

² GD2-33.

³ *Department of Employment and Social Development Act* (DESD Act), s 52(1)(b).

⁴ DESD Act, s 52(2).

reconsideration decision. On this question, the General Division noted that the reconsideration decision was dated June 22, 2016; assumed that it was sent to the Appellant by regular mail; and took judicial notice of the fact that mail in Canada is usually received within 10 days. As a result, the General Division concluded that the Appellant had received the reconsideration decision by July 2, 2016.⁵

[11] The Appellant has consistently said that he received the reconsideration decision long after it was written, though he has provided inconsistent evidence on the precise date when he received it. For example, the Appellant provided the General Division with a copy of the first page of the reconsideration decision in July 2017.⁶ Nevertheless, he also said that he had sent a copy of the decision to the Tribunal on August 18, 2017, and that he received the decision for the first time on September 17, 2017.⁷

[12] In any event, when the General Division concluded that the Appellant had received the reconsideration decision by July 2, 2016, it did not mention his assertions that he had received it late. It also did not mention the numerous communications between the Appellant and the Minister that supported the conclusion that the Appellant was unaware of the fact that the Minister's decision had already been made.⁸

[13] As a result, I have concluded—and the Minister agrees—that the General Division decision is based on an error of fact, as described in section 58(1)(c) of the *Department of Employment and Social Development Act* (DESD Act). When the General Division determined that the Appellant had received the reconsideration decision by July 2, 2016, it did so in the face of the Appellant's contradictory assertions and evidence. If the General Division wanted to reject that evidence, it needed to explain why; it could not simply ignore it.⁹

[14] Among the remedies that are available to me under section 59(1) of the DESD Act, the Minister recommends that I give the decision that the General Division should have given. I agree with this part of the Minister's submissions too. In particular, I note that the record

⁵ General Division decision at para 10.

⁶ GD1A-4.

⁷ GD1E-2 and GD1G-1.

⁸ GD1-7 to 8; GD1-13; GD1E-2; GD2-41 to 44.

⁹ *Oberde Bellefleur v Canada (Attorney General)*, 2008 FCA 13 at paras 3, 7.

concerning the extension of time is complete and, given my detailed review of the file, there is little point in sending the matter back for a General Division member to decide.¹⁰

[15] Although I recognize that the Appellant's evidence is unclear regarding the date when he received the reconsideration decision, it should also be acknowledged that there is a language barrier at play in this case and that the Appellant has had difficulty understanding some of the Tribunal's letters. Despite the Appellant's contradictory evidence regarding the precise date when he received the Minister's reconsideration decision, I believe that the issue before me should be decided based on an assessment of the evidence rather than on assumptions.

[16] Applying that approach, I have concluded that the Appellant received the Minister's reconsideration decision at some point between March 1 and July 21, 2017. I have reached that conclusion based on the following:

- a) The Appellant continued sending information to the Minister at least until January 2017, seemingly unaware that a decision in his file had already been made;¹¹
- b) He contacted Service Canada by phone on March 1, 2017, for an update on the status of his OAS pension application;¹² and
- c) On July 21, 2017, the Tribunal received from the Appellant a copy of the first page of his reconsideration decision letter.¹³

[17] Since the Appellant received the reconsideration decision between these dates, the General Division had the power to grant the Appellant the extension of time that he needed for his file to move forward. However, when deciding whether I should, in fact, allow an extension of time, I must first consider and weigh the following four factors:¹⁴

- a) Has the relevant party shown a continuing intention to pursue the appeal?

¹⁰ DESD Act, s 64(1).

¹¹ GD1E-4 to 5.

¹² GD1E-2.

¹³ GD1A-4.

¹⁴ *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883.

- b) Have they provided a reasonable explanation for the delay?
- c) Is there an arguable case on appeal?
- d) Would any other party be prejudiced by the granting of the extension?

[18] Not all four factors need to be met; the overriding consideration is that the interests of justice be served.¹⁵

[19] In this case, I find—and the Minister accepts—that the factors weigh in favour of allowing the extension of time that the Appellant needs for his file to move forward. In particular, the Appellant’s delay is explained by language issues and the late receipt of the reconsideration decision. In addition, he has regularly communicated with the Minister and the Tribunal since June 2016, when the reconsideration decision was made. The Minister also concedes that it would not be prejudiced if the extension of time were granted and that new documents submitted by the Appellant since June 15, 2016, were not considered as part of the reconsideration decision. The Minister admits that these new documents may help to establish his entitlement to an OAS pension.

[20] For all of these reasons, I am granting the Appellant’s request for an extension of time to file his appeal with the Tribunal’s General Division.

[21] So, how does this appeal proceed from here? The General Division decision before me concerned the denial of a request for an extension of time. I found an error in that General Division decision and have corrected it by giving the decision that the General Division should have given.

[22] However, the General Division has not yet assessed whether the Appellant is entitled to an OAS pension, and the file relating to this issue remains incomplete. For example, the Minister has not yet filed its submissions on this question: this is particularly important given that the Appellant has provided additional documents that the Minister has not yet considered.

¹⁵ *Canada (Attorney General) v Larkman*, 2012 FCA 204.

[23] As a result, the file should now be returned to the General Division, where the General Division can ensure the completeness of the record and then assess the Appellant's entitlement to an OAS pension.

[24] Before closing, I note that the Appellant submitted a variety of documents as part of his Appeal Division file.¹⁶ The Appeal Division does not normally consider new evidence, and, indeed, I did not consider any of the Appellant's new documents when reaching this decision.¹⁷

[25] Nevertheless, the Appellant's new documents could be relevant to the question of his entitlement to an OAS pension, which the General Division is now to decide. There is no need for the Appellant to file a second copy of those documents with the General Division. Rather, Tribunal staff are directed to place copies of AD4 and AD5 in the General Division file.

CONCLUSION

[26] The appeal is allowed, and the file will be returned to the General Division for it to decide whether the Appellant is entitled to an OAS pension.

Jude Samson
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVES:	C. R., Appellant Lora Hamilton, Representative for the Respondent

¹⁶ See, for example, AD4 and AD5.

¹⁷ *Canada (Attorney General) v O'Keefe*, 2016 FC 503 at para 28.