



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. A. v Minister of Employment and Social Development*, 2019 SST 328

Tribunal File Number: AD-19-125

BETWEEN:

H. A.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: April 4, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] H. A. (Claimant) applied for an Old Age Security pension (OAS) in 2018. The Minister of Employment and Social Development approved the application, with payment to begin the month after the Claimant's 65th birthday, being April 2019. The Claimant appealed the Minister's decision to the Tribunal, seeking an earlier start date for payment of the pension. The Tribunal's General Division summarily dismissed the Claimant's appeal because it had no reasonable chance of success.

[3] The Claimant's appeal to the Tribunal's Appeal Division is dismissed because the General Division made no error under the *Department of Employment and Social Development Act* (DESD Act).

PRELIMINARY MATTER

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

- The legal issue to be decided is straightforward
- The parties' legal positions are clear
- The parties attended a pre-hearing teleconference where procedural issues were discussed
- Neither party requested an oral hearing
- The *Social Security Tribunal Regulations* requires that proceedings be concluded as quickly as the circumstances and considerations of fairness and natural justice permit¹

¹ *Social Security Tribunal Regulations* s. 3(1)(a)

ISSUE

[5] Did the General Division base its decision on an erroneous finding of fact because it failed to consider medical records, documents from a public utility, other documents that the Claimant produced, or the Claimant's financial circumstances?

ANALYSIS

[6] The 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.² Therefore, to succeed on appeal, the Claimant must prove that the General Division made at least one of these errors. The Claimant's arguments are considered in this context below.

[7] The Claimant applied for the OAS before his 65th birthday. Under the legislation, this pension is payable to a claimant who meets the residential requirements, and has reached age 65.³ This is correctly set out in the General Division decision.⁴ The Claimant presented a number of documents to the General Division to support his request that the OAS be paid to him before he reached this age, including documents that supported his dire financial circumstances, and references to other government programs that permit payment of pensions and benefits prior to age 65. He also argued that the Minister or Members of Parliament have discretion to change the rules. This information and arguments are summarized in the General Division decision.⁵

[8] The General Division considered the evidence that was before it, including the documents that the Claimant presented. The General Division decision was based on undisputed facts: the Claimant was born in March 1954. He reached age 65 in March 2019. He applied for the OAS in 2018. The earliest that the OAS can be paid to the Claimant is April 2019. I have reviewed the General Division decision and the written record. The General Division did not

² DESD Act s. 58(1)

³ *Old Age Security Act* s. 3(1)(c)

⁴ General Division decision at para.11

⁵ *Ibid.* at para. 8

overlook or misconstrue any important information. It did not base its decision on any erroneous finding of fact.

[9] The decision also states, correctly, that the Tribunal is created by legislation (the DESD Act) and only has the legal authority granted to it in that legislation. It has no jurisdiction to ignore or change the statute.⁶ The General Division made no error in law.

[10] The principles of natural justice are concerned with ensuring that all parties to an appeal have the opportunity to present their case to the Tribunal, to know and answer the legal case against them and to have a decision made by an independent decision maker. There is no suggestion that the General Division failed to observe these principles.

[11] Therefore, the General Division made no errors under the DESD Act. The Appeal Division cannot intervene.

CONCLUSION

[12] The appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
SUBMISSIONS:	H. A., Appellant

⁶ Ibid. at para. 10