



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. W. v Minister of Employment and Social Development and L. C.*, 2019 SST 1621

Tribunal File Number: GP-18-1010

BETWEEN:

K. W.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

and

L. C.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Brian Rodenhurst

Teleconference hearing on: July 10, 2019

Date of decision: August 12, 2019

DECISION

[1] The Claimant's appeal is dismissed.

OVERVIEW

[2] The Appellant applied for Old Age Security (OAS) by a Conversion Application. The Conversion Application was denied. The Appellant filed an Application for OAS. The Application was approved and his OAS benefit was granted.

[3] The Minister received the Claimant's application for OAS Pension on June 12, 2017. The Minister approved the pension.

[4] The Appellant appeals the effective date of his pension. He maintains the pension should have commenced in September 2015.

PRELIMINARY MATTERS

[5] The Appellant participated in the oral hearing with the help of an interpreter.

ISSUE(S)

[6] Should the effective date of the Appellant's OAS pension be prior to June 2016?

[7] Does the Tribunal have any authority to review a decision of the Minister made under s. 32 Old Age Security Act?

ANALYSIS

[8] The Appellant was 65 years of age on August 20, 2015. The Appellant applied for Old Age Security (OAS) on two occasions. The Appellant was sent an OAS Conversion Application on July 14, 2015. He filed his Conversion Application on December 9, 2015. The Conversion Application was denied. On June 14, 2017, he filed an OAS application.

[9] The Appellant applied for his OAS pension using a Conversion Application. The Appellant was over the age of 65 on December 9, 2015. The Minister denied the application as the Appellant applied on an application that must be submitted prior to his 65th. birthday.

Section 2(1) of the OAS Regulations stipulates that: *the application form means the form of application required by the Minister.* The Appellant did not submit the application that complied with the form of application required by the Minister.

[10] The Appellant was deemed to have applied on the proper form in May 2017. In accordance with s.8 (2) of the OAS his application was approved one year prior to the deemed application date. The maximum period allowed in the OAS Act. The date of payment pursuant to the Act was June 2016.

[11] The Appellant testified at the oral hearing his Appeal was based on administrative errors by the Minister. The first error was the Minister sent the Conversion Application to his former address. He moved in July 2015. He visited his former address in late November 2015 and discovered the application from the Minister in mail given to him by the caretaker. He completed the application and filed it at a Service Canada location in December 2015. He maintains that he was given incorrect information at Service Canada regarding the correct form of application to file. He testified he should have been given the correct application form required after his 65th. birthday. He indicated there should have been a warning on the Conversion Application that he must apply before his 65th. birthday. The next error was he changed his address in December 2016. The Claimant testified the Minister committed a further administrative error regarding his inquiries about the status of his OAS application. He maintains his inquiries were not answered in a timely manner. It was his evidence the delay resulted in him not receiving his benefit when he first qualified.

[12] The Appellant maintained there was an administrative error surrounding the process in his applying for OAS. He maintains he was not informed he was using the wrong form and this resulted in a loss of benefits from September 2015 through June 2016. The Minister conducted a review of the information provided by the Appellant. The Minister concluded the Appellant had not been denied a benefit resulting from erroneous advice/administrative error. Section 32 of the *Old Age Security Act* stipulates the Minister shall take such remedial action as the Minister considers appropriate where the Minister is satisfied that as a result of erroneous advice or administrative error a person has been denied a benefit or portion of benefit. The Minister

concluded the Appellant was not denied a benefit as a result of erroneous advice/administrative error regarding the Conversion Application.

[13] Having determined there was not an administrative error with regards to the Conversion Application not being received prior to the 65th. birthday, the Minister investigated the circumstances concerning the updating the Claimant's address. The Minister identified a possible administrative error due to the mailing of OAS and GIS applications to the former address of the Appellant. The Minister acknowledged the Appellant changed his address on December 19, 2016. The address error resulted in the need for remedial action. The Minister commenced eligibility in June 2016 due to the error.

[14] I do not have jurisdiction to reverse the decision of the Minister. A Review Tribunal does not have jurisdiction to set aside a decision of the Minister made under s.32. In such a case, the Federal Court has jurisdiction¹. While the Minister may exercise discretion under s. 32 to deem an application to have been received within the deadline, the Review Tribunal does not have authority to review a decision of the Minister not to extend the deadline in the circumstances of an alleged administrative error. The Federal Court can review the decision². Federal Court decisions are clear I do not have jurisdiction to review the decision of the Minister made under s.32 of the OAS. Jurisdiction in administrative law is either given or not. The Tribunal does not have equitable jurisdiction.

[15] The authority given to the Minister in Section 32 OAS are not decisions respecting the amount of any benefit that may be paid to that person within the meaning of s.27.1(1). The only remedy available to a recipient under the circumstances was to apply to the Federal Court for judicial review of the Minister's decision³. The *Grosvenor* decision is similar to the issue of this Appeal as the decision considered the result of erroneous advice alleged by the applicant. The *Grosvenor* decision is further confirmation the Tribunal does not have jurisdiction.

Regulations

¹ *Canada (Attorney General) v. Vinet-Proulx* 2007 FC 99

² *Canada (Minister of Human Resources Development) v. Reisinger* 2004 FC 893

³ *Grosvenor v. Canada (Attorney General)*, 2011 FC 799

[16] Section 2(1) of the *OAS Regulations* interprets ‘application form’ (1) application form means the form of application required by the Minister. The Appellant applied for an OAS pension using a Conversion Application. As the Appellant was over the age of 65 he was not using the form of application required by the Minister. The application was denied.

[17] The Regulations does not contain a provision that allows the Tribunal to vary a provision of these Regulations if there are special circumstances. In the absence of the statutory authority, I do not have authority equitable or otherwise to vary a provision. To assume jurisdiction not given by the governing Statute and Regulations would cause confusion. Certainty is paramount in order claimants appeal to the correct forum and not be in jeopardy of failing to comply with mandatory time periods.

CONCLUSION

[18] The appeal is dismissed.

Brian Rodenhurst
Member, General Division - Income Security