Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *D. G. v Minister of Employment and Social Development*, 2019 SST 1037

Tribunal File Number: AD-19-651

BETWEEN:

D. G.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: October 10, 2019

Canada

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant, D. G., was born in 1942 and immigrated to Canada from the United States in 1968. In November 2017, he applied for an Old Age Security (OAS) pension.

[3] The Respondent, the Minister of Employment and Social Development (Minister) granted the Applicant a full OAS pension with a first payment date of December 2016—the maximum period of retroactivity ordinarily permitted under the law.

[4] The Applicant appealed the Minister's determination of the first payment date to the General Division of the Social Security Tribunal. He said that he had never given thought to receiving government benefits until 2013, when his wife died and he discovered that he was eligible for a Quebec Pension Plan survivor's pension and death benefit. At the time, he asked provincial officials what other government benefits were available to him, but they told him that there was none. He insisted that, if he had known about his potential eligibility for OAS benefits when he turned 65, he would have applied for them at that time. He noted that the federal government had never informed him about his potential entitlement to OAS benefits, and he argued that it was unfair of the government to, in effect, punish him by denying him almost 10 years of back payments.

[5] The General Division held a hearing by teleconference and, in a decision dated August 8, 2019, dismissed the appeal, finding that the Minister had acted within the law by limiting the Applicant's retroactive OAS pension payments.

[6] The Applicant has now submitted an application for leave to appeal to the Tribunal's Appeal Division. The Applicant disagrees with the General Division's decision, alleging that the presiding member missed the point of his submissions and simply blamed him for not knowing the law.

[7] I have reviewed the Applicant's submissions against the record. I have concluded that this is not a suitable case in which to grant leave to appeal.

ISSUE

[8] Under section 58(1) of the *Department of Employment and Social Development Act* (DESDA), there are only three grounds of appeal to the Appeal Division: The General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material. An appeal may be brought only if the Appeal Division first grants leave to appeal.[1]

[9] Leave to appeal will be granted if the Appeal Division is satisfied that the appeal has a reasonable chance of success.[2] As the Federal Court of Appeal has determined, a reasonable chance of success is akin to an arguable case at law.[3]

[10] My task is to determine whether any of the Applicant's reasons for appealing fall under the categories specified in section 58(1) of the DESDA and, if so, whether any of them raise an arguable case on appeal.

ANALYSIS

[11] I do not see an arguable case that, in coming to its decision, the General Division breached any principle of natural justice or committed an error in fact or law. The General Division assessed the record and concluded that the Applicant, having applied for an OAS pension in November 2017, was entitled to no more than 11 months of retroactive payments. The General Division saw no merit in any of the Applicant's arguments, and I see no reason to interfere with its reasoning.

[12] While the Applicant may not agree with the General Division's conclusion, my jurisdiction to offer him a remedy is limited under section 58(1) of the DESDA. As the General Division rightly noted, the Minister has the discretion to deem an application received prior to the date it was actually received if the delay was the result of its own erroneous advice or

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[1] DESDA at ss 56(1) and 58(3).
[2] DESDA at s 58(1).
[3] *Fancy v Canada (Attorney General)*, 2010 FCA 63.

administrative error. However, the Applicant made it clear that whatever erroneous advice he received came from provincial officials in Quebec.

[13] The Applicant's submissions indicate that the object of his ire is not so much the General Division, but the OASA itself—particularly the way in which it strictly limits retroactive payment. Although I sympathize with the Applicant, I, like the General Division, am bound to follow the OASA as it is written. The Applicant finds it unfair that Canadian residents are sometimes denied benefits merely because they submitted—perhaps for understandable reasons—their application late, yet this is the outcome that Parliament prescribed when it enacted the OASA. The General Division found that it could not simply ignore the letter of the law and order what it felt was a just result. Such power, known as "equity," has traditionally been reserved to the courts, although even they typically exercise it only if there is no adequate remedy at law. In *Canada v Esler*,[4] for example, the Federal Court reversed an attempt by the General Division's predecessor tribunal to extend retroactive OASA benefits beyond the legislative limitation, stating: "The Review Tribunal is a pure creature of statute and as such, has no inherent equitable jurisdiction which would allow it to ignore the clear legislative provision contained in subsection 8(2)[5] of the Act and use the principle of fairness to grant retroactive benefits in excess of the statutory limit."

CONCLUSION

[14] Since the Applicant has not identified any grounds of appeal under section 58(1) of the DESDA that would have a reasonable chance of success on appeal, the application for leave is refused.

[4] *Canada (Minister of Human Resources Development) v Esler*, 2004 FC 1567.
[5] Section 8 of the OASA limits retroactive payment of the OAS pension to 11 months before the date of application.

Member, Appeal Division

REPRESENTATIVE:	D. G., self-represented