



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *T. J. v Minister of Employment and Social Development*, 2019 SST 1402

Tribunal File Number: AD-19-590

BETWEEN:

**T. J.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: December 12, 2019

## DECISION AND REASONS

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] T. J. (Claimant) worked for many years as a police officer. He turned 65 in March 2005. In February 2017 the Claimant applied for an Old Age Security pension (OAS). The Minister of Employment and Social Development granted the application and began payment as of March 2016. This was eleven months before the application was received by the Minister, which is the maximum retroactivity of payment allowed under the Old Age Security Act.<sup>1</sup>

[3] The Claimant appealed the Minister's decision regarding payment retroactivity to the Tribunal. He argues that the pension should begin to be paid to him as of March 2005, when he turned 65. The Tribunal summarily dismissed the appeal because it decided that the appeal had no reasonable chance of success. The Claimant's appeal from this decision is dismissed because the General Division did not make any errors 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:

- a) The parties attended a Case conference where the law and the issues were discussed;
- b) The legal issue to be decided is straightforward;
- c) Neither party requested an oral hearing; and

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<sup>1</sup> *Old Age Security Act* s. 8(2) and *Old Age Security Act Regulations* s. 5(2)(a)

- d) The *Social Security Tribunal Regulations* require that proceedings be concluded as quickly as the circumstances and considerations of fairness and natural justice permit.<sup>2</sup>

## **GROUND OF APPEAL**

[5] The DESD Act governs the Tribunal. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or
- d) based its decision on an important factual error.<sup>3</sup>

## **ANALYSIS**

[6] The Claimant indicated on his application to the Appeal Division that the General Division had failed to observe principles of natural justice (failed to provide a fair process). These principles are concerned with ensuring that the parties to an appeal have the opportunity to present their case to the tribunal, to know and answer the other party's case, and to have a decision made by an independent decision maker based on the law and the facts.

[7] The Claimant did not set out how he says the General Division failed to observe these principles. The Appeal Division held a Case Conference prior to deciding the appeal. At the Case Conference the Claimant explained that he had relied on advice given to him by someone who assured him that even though he applied for OAS in 2017 it would be paid retroactively to 2005. He also attended for a polygraph and prepared a sworn affidavit that confirmed this. He

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<sup>2</sup> *Social Security Tribunal Regulations* s. 3(1)

<sup>3</sup> This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

requested that Service Canada conduct a further erroneous advice investigation and take this evidence into consideration.

[8] After the Case Conference, Service Canada refused to conduct this investigation again because it had done so previously (before the polygraph evidence was available).

[9] While I appreciate the Claimant's frustration with these circumstances, I am unable to grant the Claimant any relief. I have no legal authority over the conduct of Service Canada's employees.<sup>4</sup> This is also correctly set out in the General Division decision.<sup>5</sup> The Claimant's arguments do not point to the General Division having failed to decide an issue that it should have decided, or deciding something that it should not have. It does not point to any bias by the General Division, or any failure to provide a fair process at the Tribunal.

[10] I have also read the General Division decision and reviewed the documents filed with the Tribunal. The General Division did not overlook or misconstrue any important information. There is no indication that the General Division made an error in law or based its decision on an important factual error.

[11] Therefore, the General Division made no error under the DESD Act.

## CONCLUSION

[12] The appeal is dismissed.

Valerie Hazlett Parker  
Member, Appeal Division

HEARD ON:	
METHOD OF PROCEEDING:	On the Record
APPEARANCES:	T. J., Appellant

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<sup>4</sup> Under the *Federal Courts Act*, the Claimant may seek relief from the Federal Court

<sup>5</sup> General Division decision at para. 15

	Viola Hebert, Representative for the Respondent
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