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

Citation: *K. L. v Minister of Employment and Social Development*, 2020 SST 4

Tribunal File Number: AD-19-831

BETWEEN:

K. L.

Applicant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: January 3, 2020

Canada

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Claimant, K. L., turned 65 in January 2012 and applied for the Old Age Security (OAS) pension later that year. In December 2012, the Minister approved his pension with an effective start date of February 2012. However, in May 2013, the Claimant changed his mind and told the Minister that he wished to delay his pension until a later date. Under the OAS voluntary deferral program, which took effect on July 1, 2013, the longer he waited to receive his pension, the higher the monthly amount would be.[1]

[3] The Minister agreed to the Claimant's request but first required him to repay $6,517, which it calculated was the amount of money that it had paid him from February 2012 to January 2013. In January 2014, the Minister acknowledged payment of the specified amount in full, and it informed the Claimant that, in compliance with his request, it had cancelled his OAS pension. The Minister also advised him that, if he wanted to receive the OAS pension in the future, he would have to submit a new application.[2]

[4] In July 2016, the Claimant again applied for his OAS pension, specifying that he wished to begin receiving it in January 2017, the month he would be turning 70. The Minister approved the application in March 2017 and began paying the pension effective February 2017. However, the monthly pension amount, as calculated by the Minister, was less than what the Claimant had been expecting: it was only 25.8 percent more than the full OAS pension amount rather than the 36 percent premium to which the Claimant believed he was entitled. He asked the Minister to either increase the premium to 36 percent or return the $6,517 that he had repaid in 2013.

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[1] Under section 7.1 of the *Old Age Security Act*, a claimant's monthly pension payment will be increased by 0.6 percent for every month they delay receiving it, up to a maximum of 36 percent at age 70.
[2] Letter from the Minister to the Claimant dated January 2, 2014, GD2-29.

[5] The Minister refused this request. The Claimant appealed this refusal to the General Division of the Social Security Tribunal, which held a hearing by teleconference. At the hearing, the Claimant conceded that the 25.8 percent premium was correct, but he argued that there was nothing in the law that required him to repay the OAS pension payments he had received in 2012 and 2013. He also claimed that the Minister's employees had given him incorrect advice about what he could expect if he chose to defer his pension.

[6] In a decision dated October 16, 2019, the General Division dismissed the appeal. It found that, when the Claimant returned the $6,517 to the Minister, he succeeded in cancelling his initial OAS pension according to the law. The General Division also found that, even if the Minister's staff did provide incorrect advice to the Claimant, it had no authority to consider that issue.

[7] On November 28, 2019, the Claimant requested leave to appeal from the Tribunal's Appeal Division, alleging that the General Division committed the following errors in arriving at its decision:

- It sided with the Minister without addressing the Claimant's concerns about the "unpaid" amount of his pension from February 2012 to June 2013.
- It ignored the Minister's "admission" that it is not required by law to demand the return of pension amounts already paid before agreeing to cancel an OAS pension.
- It approached the case with a closed mind, as indicated by the fact that it issued its decision only a short time after the hearing.

[8] I have reviewed the General Division's decision against the record. I have concluded that the Claimant has not raised any arguments that will have a reasonable chance of success on appeal.

ISSUES

[9] There are only three grounds of appeal to the Appeal Division. A claimant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important error of fact.[3]

[10] An appeal can proceed only if the Appeal Division first grants leave to appeal.[4] At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.[5] This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.[6]

[11] I have to decide whether there is an arguable case for any of the Claimant's reasons for appealing.

ANALYSIS

[12] In general, the Claimant's submissions mirror arguments that were already presented to the General Division. He is repeating his claims that he was the victim of bad advice and that he was induced into repaying money when, under the law, he did not have to do so. To succeed at the Appeal Division, it is not enough for a claimant to simply disagree with the General Division's decision or to insist that they are entitled to a particular pension amount.

[13] Still, the Claimant has raised three points, which I will address in detail:

There is no arguable case that the General Division disregarded the Claimant's concerns about the "unpaid" amount of his pension from February 2012 to June 2013

[14] The Minister told the Claimant that, if he wanted to take advantage of the OAS deferral program, he had to cancel his pension and repay the OAS pension amounts that he had already received from February 2012 to January 2013. The Claimant seems to be arguing, as he did at the General Division, that, since the OAS deferral program did not come into effect until July 1, 2013, he had a right to:

(i) receive an OAS pension up to that point;

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[3] Section 58(1) of the *Department of Employment and Social Development Act* (DESDA).
[4] DESDA, ss 56(1) and 58(3).
[5] DESDA, s 58(2).
[6] *Fancy v Canada (Attorney General)*, 2010 FCA 63.

(ii) cancel that OAS pension;

(iii) keep the 12 months of payments he had already received;

(iv) receive another five months of payments up to July 1, 2013; and

(v) reapply for an OAS pension and receive payments at the 25.8 percent premium as of February 2017.

[15] In my view, the Claimant cannot argue that the General Division ignored his argument, misunderstood the facts surrounding his case, or misapplied the relevant law.

[16] The General Division examined the record and determined that the Claimant had, in fact, cancelled his original OAS pension. He asked the Minister to do so in writing within six months of his application, as required by section 9.3(1) of the *Old Age Security Act* (OASA) and section 26.1(1) of the *Old Age Security Regulations* (OASR). In doing so, he repaid the pension money that he had already received within six months of his cancellation request, as required by section 9.3(2) of the OASA and section 26.1(2) of the OASR. The Claimant's first OAS application was thus deemed never to have been made, so he had no choice but to submit a second OAS application if he wanted to resume his pension and benefit from the deferral of that pension. However, the start date of that pension was always going to be dependent on the date of application, and the premium derived from delaying the pension was always going to be tied to the date on which the deferral provision came into effect. When the Claimant returned his 12 months of pension payments to the Minister, there was nothing in the law that permitted him to get them back, and there was certainly nothing that entitled him an additional five months of benefits.

There is no arguable case that the General Division ignored the Minister's "admission" that its demand for repayment was a policy, rather than the law

[17] The Claimant submits, as he did at the General Division, that the law did not require the Minister to demand repayment of OAS pension amounts that it had already paid out. He bases this argument on the following passage from one of the Minister's written submissions:

> Based on the information the appellant has provided, he is aware of the OAS Deferral provision. The Minister concedes that it is a requirement for the appellant to repay all benefits he had previously

> received for the period from February 2012 to June 2013 as a condition for deferral. The Minister acted in accordance with the OAS *policy and procedures* [emphasis added].[7]

[18] I see no indication that the General Division disregarded the Claimant's argument that the Minister was acting on policy rather than law:

> The Claimant says the requirement to pay back his 2012 and 2013 OAS payments was only a policy. He says he is not bound by a policy: he can only be bound by a law. The Minister's submissions also focus on the policy, rather than the law. I will consider whether the law required the Claimant to repay the payments he received prior to July 2013.[8]

[19] The General Division then proceeded to explain how, in its view, the Minister's demand for repayment was grounded in law. I see no error in its analysis. The Minister may have used the word "policy" to justify what it did, but that did not mean the policy lacked legal force.

There is no arguable case that the General Division approached the Claimant's case with a closed mind

[20] The Claimant alleges that the General Division came to its decision within one hour of the hearing, suggesting to him that the General Division gave his appeal little attention or, worse, displayed bias toward the Minister.

[21] I do not see an arguable case on this point. First, the General Division's decision was issued, not on the same day of the hearing, but one day *after* the hearing. As the Claimant notes, the General Division member who presided over his appeal told him that it would take up to 30 days to prepare written reasons for his decision, but he was under no obligation to take that long to complete the task.

[22] Bias suggests a state of mind that is in some way predisposed to a particular result. The threshold for a finding of bias is high, and the onus of establishing bias lies with the party alleging its existence. The Supreme Court of Canada[9] has stated that test for bias is, "What would an informed person, viewing the matter realistically and practically and having thought

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[7] Minister's written submission dated August 6, 2019, GD5-2.
[8] General Division decision, para 9.
[9] *Committee for Justice and Liberty v Canada (National Energy Board)* 1976 2 (SCC), 1978 1SCR.

the matter through conclude?" A real likelihood of bias must be demonstrated, with a mere suspicion not being enough. An unfavourable result is not by itself evidence of impartiality.

[23] The Claimant has not pointed any specific evidence of bias other than the unfavourable decision and the short time between the hearing and that decision. I have reviewed the audio recording of the hearing and heard nothing in the tone or content of the member's remarks that suggested bias toward the Claimant. The mere fact that the General Division prepared and finalized its decision within a day of the hearing does not necessarily mean that it inadequately considered the Claimant's evidence and arguments. It should be kept in mind that the hard work of reviewing the documents in the case file can (and should) be done in advance of the hearing; in any event, the proof of whether a particular outcome is supported by considered reasons lies in the written decision itself.

[24] My review of the decision indicates that the General Division analyzed the Claimant's submissions in detail—in particular, his argument that he should have been allowed to keep the pension payments derived from his first OAS application—but concluded that the Minister had acted according to the law. The General Division then determined—correctly, in my view—that it had no jurisdiction to provide a remedy for ministerial error. I see no indication that the General Division misapplied the law or gave inadequate consideration to the material before it.

CONCLUSION

[25] The Claimant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, the application for leave to appeal is refused.

Member, Appeal Division

REPRESENTATIVE:	K. L., self-represented