



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.*, 2020 SST 103

Tribunal File Number: AD-19-793

BETWEEN:

**K. W.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

and

**L. C.**

Added Party

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

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Leave to Appeal Decision and Decision by: Shirley Netten

Date of Decision: February 11, 2020

## DECISION AND REASONS

### DECISION

[1] The Application for leave to appeal is granted, and the appeal is allowed.

### BACKGROUND

[2] In December 2015, a few months after his 65<sup>th</sup> birthday, K. W. (Claimant) submitted his application for Old Age Security (OAS) and the Guaranteed Income Supplement (GIS) using a Conversion Application. The Conversion Application is available to those receiving a monthly Allowance, and claimants are supposed to submit the Application before turning 65. Although the Claimant made inquiries, it was only in June 2017 that Service Canada told the Claimant that he should have used a different form. The Claimant then submitted a regular application, and his benefits were approved. Based on the later application date, his benefits were only retroactive to June 2016.

[3] The Claimant wanted his payments to start the month after his 65<sup>th</sup> birthday, based on his initial application. Service Canada denied this request on behalf of the Minister of Employment and Social Development (Minister). The General Division denied the Claimant's appeal. The Claimant then requested leave to appeal to the Appeal Division.

### AGREEMENT

[4] The parties participated in a settlement conference.<sup>1</sup> The parties then filed a written agreement<sup>2</sup> and requested that I issue a decision. The agreement, dated February 7, 2020, states:

The parties agree this appeal should be allowed on the basis that the General Division erred in law under section 58(1)(b) of the *Department of Employment and Social Development Act* when it failed to consider that the Appellant's Conversion Application could have been accepted as the application required by the Minister for the purposes of ss. 2(1) and 3(1) of the *Old Age Security Regulations*.

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<sup>1</sup> *Social Security Tribunal Regulations* (Regulations), s 17.

<sup>2</sup> Regulations, s 18.

[...]

- (a) Pursuant to paragraph 3(2)(b) of the *Old Age Security Act* (OAS Act), the Appellant qualifies for a partial OAS pension of 17/40<sup>th</sup> based on his residency in Canada from October 5, 1997 to August 20, 2015; and
- (b) Considering the Appellant's Conversion Application for an OAS pension submitted in December 2015 and sections 8(1) and 8(2)(b) of the OAS Act, the Appellant is entitled to receive a partial OAS pension as of September 2015.
- (c) Pursuant to sections 11 and 15 of the OAS Act the Appellant qualified to receive the Guaranteed Income Supplement as a married person for the period of September 2015 to May 2016.

## REASONS

[5] The Appeal Division must grant leave (permission) to appeal if the appeal has a reasonable chance of success.<sup>3</sup> Given my acceptance of the parties' agreement as set out below, I am giving the Claimant permission to appeal. I am also allowing the appeal.

[6] An error of law is one of the grounds of appeal permitting the Appeal Division to intervene.<sup>4</sup> I accept the parties' agreement that the General Division erred in law. In its decision, the General Division failed to analyze whether the Claimant's December 2015 application could have been accepted by the Minister under the *Old Age Security Regulations* (Regulations).

[7] Where there has been an error of law, I have the power to substitute my decision for that of the General Division.<sup>5</sup> I accept the parties' proposed disposition, because it is consistent with the evidence and relevant law. The parties have agreed that the December 2015 Conversion Application is the Claimant's application for OAS and GIS. This is permitted by the Regulations.<sup>6</sup> Based upon this application date, the Claimant was entitled to receive his OAS and GIS benefits beginning in September 2015, the month after he turned 65.<sup>7</sup>

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<sup>3</sup> *Department of Social Employment and Development Act* (DESDA), s 58(2).

<sup>4</sup> *Department of Social Employment and Development Act* (DESDA), s 58(1)(b).

<sup>5</sup> DESDA, s 59(1).

<sup>6</sup> Regulations, ss 2(1), 3(1)

<sup>7</sup> *Old Age Security Act*, ss 8, 11.

**CONCLUSION**

[8] The Application for leave to appeal is granted, and the appeal is allowed.

[9] The Claimant is entitled to receive a partial (17/40<sup>th</sup>) OAS pension as of September 2015. He qualified to receive the GIS as a married person for the period of September 2015 to May 2016.

Shirley Netten  
Member, Appeal Division