



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *PN v Minister of Employment and Social Development*, 2021 SST 22

Tribunal File Number: AD-20-832

BETWEEN:

P. N.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: January 25, 2021

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] P. N. (Claimant) applied for an Old Age Security Pension in 2009. The Minister of Employment and Social Development awarded her 3/40ths of a full pension based on her residence in Canada after she turned 18 years old.

[3] In 2019, the Claimant requested that the Minister reconsider its decision because she wanted to be paid a higher amount. This request was made more than 90 days after the time permitted. The Minister refused to extend time for the Claimant to request reconsideration. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. The General Division decided that the Minister had not made an error when it decided that the Claimant did not have a reasonable explanation for her delay in requesting reconsideration or a continuing intention to appeal.

[4] The Claimant was granted leave to appeal this decision to the Tribunal's Appeal Division. I have now read the General Division decision and the written record. I have listened to the parties' oral arguments and considered their written submissions. The General Division made an error in law. It failed to consider whether the Minister exercised its discretion judicially when it refused to reconsider its decision. The appeal is allowed. The matter is referred back to the Minister for reconsideration.

ISSUES

[5] Did the General Division fail to provide a fair process because the Claimant was not able to respond to documents before it made its decision?

[6] Did the General Division make an error in law because it failed to consider whether the Minister acted judicially when it made its decision?

ANALYSIS

[7] An appeal to the Tribunal's Appeal Division is not a re-hearing of the original claim. Instead, the Appeal Division can only 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.¹

The grounds of appeal are considered in this context below.

The General Division provided a fair process

[8] The General Division must provide a fair process to all parties. This means that every party must have the opportunity to present their case to the General Division, 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. The Claimant says that the General Division failed to provide this to her because she did not receive documents and have the opportunity to comment on them.

[9] In the Notice of Appeal that the Claimant filed with the General Division she wrote that her address is in X, Ma., USA. The Tribunal mailed documents to this address.

[10] The Claimant later provided authorization to communicate with her by email. The General Division sent the Claimant a notice that her appeal would be decided on the basis of the documents filed with the Tribunal. This was sent to her by email at the e-address she provided. Nothing suggests that the email was not properly transmitted. The Claimant did not file anything further with the Tribunal before it made its decision.

[11] The Claimant says that she did not receive this notice because she was in another location without internet access.

¹This paraphrases the grounds of appeal set out in s. 58(1) of the *Department of Employment and Social Development Act*

[12] Claimants must notify the Tribunal of any change in their contact information.² The Claimant did so when she provided her email address. No other changes in contact information were filed. That she did not receive notice that the General Division was going to make its decision based on the documents filed with the Tribunal is not a failure to provide a fair process. The Tribunal gave notice by email, as permitted by the Claimant. The Tribunal allowed the Claimant time to respond to the notice before it made its decision.

[13] In addition, in her oral and written submissions to the Appeal Division, the Claimant did not refer to any additional documents, or other evidence that she would have presented.

[14] Therefore, I conclude that the General Division provided a fair process. The appeal fails on this basis.

The General Division made an error in law

[15] The General Division decision correctly states that it had to decide whether the Minister acted judicially when it decided not to extend time for the Claimant to request reconsideration of its decision. The Minister acted judicially if it did not

- a) act in bad faith;
- b) act for an improper purpose;
- c) fail to consider relevant factor;
- d) consider an irrelevant factor; or
- e) act in a discriminatory manner.³

[16] However, the General Division did not consider these factors. This is an error in law.

[17] The General Division considered and decided whether the Claimant had a reasonable explanation for her delay in requesting reconsideration and a continuing intention to appeal.

² *Social Security Tribunal Regulations* s. 6

³ General Division decision at para.1 (p.3); *Canada (Attorney General) v. Purcell*, 1995 CanLII 3558 (FCA)

These factors are to be examined to decide whether an extension of time to request reconsideration is to be granted.

[18] The General Division should only have considered these factors if it had first decided that the Minister had failed to act judicially when it exercised its discretion. Then, it should also have considered whether the appeal had a reasonable chance of success and whether there would be any prejudice to the other party if it were to proceed.⁴ That the General Division failed to consider all of these factors is also an error.

[19] Therefore, the Appeal Division must intervene.

REMEDY

[20] When the Appeal Division intervenes, it can provide different remedies.⁵ I give the decision that the General Division should have given for the following reasons:

- a) The written record is complete;
- b) Although the Claimant says that she did not have the opportunity to respond to documents, she has given no indication of any other documents or arguments that she would present to the Tribunal;
- c) The facts are not in dispute;
- d) The Claimant asked that I make the decision in this appeal. The Minister asked that I give the decision that the General Division should have given;
- e) The Tribunal can decide questions of law and fact that are necessary to dispose of an appeal;⁶ and
- f) The Tribunal must conclude appeals as quickly as the circumstances and considerations of fairness and natural justice permit.⁷

⁴ Section 29.1 of the Old Age Security Regulations

⁵ Section 59(1) of the *Department of Employment and Social Development Act*

⁶ Section 64(1) of the *Department of Employment and Social Development Act*

⁷ *Social Security Tribunal Regulations* s. 3

[21] Whether a claimant receives a full or partial pension is based on their years of residence in Canada from their 18th birthday until they apply for the pension.⁸ A full pension is awarded to a claimant who has lived in Canada for at least 40 years after they turn 18.

[22] The Claimant resided in Canada for three years during this time.⁹ Therefore, the Minister awarded her 3/40th of a full pension. The Claimant does not dispute the Minister's decision regarding her residence in Canada, although she says that she spends four to five months in Canada each year.

[23] The Minister decided not to extend time for reconsideration in its letter of November 29, 2019.¹⁰ The letter states that the request for reconsideration was made more than 90 days after its initial decision, and that the Minister could not reconsider the application because the 90 days to request reconsideration had passed.

[24] However, time to request reconsideration can be extended.¹¹ In this case, the Minister must consider the following factors when deciding whether to extend time:

- a) Whether there is a reasonable explanation for requesting a longer time;
- b) Whether the claimant has a continuing intention to request reconsideration;
- c) Whether the request has a reasonable chance of success; and
- d) Whether there would be any prejudice if an extension of time is allowed.¹²

Nothing in the written record suggests that the Minister considered any of these things. It failed to consider relevant factors. Therefore, the Minister failed to exercise its discretion judicially. So, the matter is returned to the Minister so that it can reconsider the matter.

⁸ Section 3 of the *Old Age Security Act*

⁹ See GD2-29 where the Claimant set out her residence history

¹⁰ GD2-9

¹¹ See section 29.1 of the *Old Age Security Regulations*

¹² Section 29.1 of the *Old Age Security Regulations*

CONCLUSION

[25] The appeal is allowed.

[26] This matter is referred back to the Minister for reconsideration.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	January 20, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	P. N., Appellant Viola Herbert, Representative for the Respondent