



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *The estate of WB v Minister of Employment and Social Development*, 2021 SST 225

Tribunal File Number: AD-21-122

BETWEEN:

The estate of W. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: May 31, 2021

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] W. B. (Claimant) passed away in July 2018. He resided in Canada for many years. He had not applied for an Old Age Security pension before he died. In January 2020, his family applied for this benefit on his behalf.

[3] The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that the Claimant's family had applied for the benefit after the time to do so had expired.

[4] The appeal from this decision is dismissed. The General Division made no error upon which the Appeal Division can intervene.

PRELIMINARY MATTER

[5] This appeal was decided on the basis of the documents filed with the Tribunal because:

- a) The facts are not in dispute;
- b) The written record is complete. There are no gaps in the information filed with the Tribunal;
- c) Neither party requested an oral hearing;
- d) The Parties had an opportunity to present their legal arguments to the Appeal Division;

- e) The Tribunal has legal authority to decide questions of law and fact necessary to dispose of appeals;¹
- f) The Tribunal must conclude appeals as quickly as the considerations of fairness and natural justice permit.²

ISSUE

[6] Did the General Division make an error upon which the Appeal Division can intervene?

ANALYSIS

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

Fair process

[7] The Tribunal must provide parties with a fair process (natural justice). This means that all parties to an appeal must have the opportunity to present their legal case to the Tribunal, to know and answer the other party's legal case, and to have a decision made by an impartial decision maker based on the law and the facts.

[8] The Claimant's representative says that the process was not fair because she was not made aware of the deadline to make an OAS application after the Claimant passed away.³

¹ Section 64 of the Department of Employment and Social Development Act

² Section 3(1) of the Social Security Tribunal Regulations

³ Section 29 of the Old Age Security Act says that an application for this pension must be made within 12 months of a claimant's death.

However, this does not point to any error made by the General Division. The decision states that it provided notice of its intention to summarily dismiss the appeal with an opportunity to respond.⁴ The Claimant was provided with copies of all documents filed by the Minister, so knew its legal case and could respond to it. There is no suggestion that the General Division was unbiased. The decision sets out the law and applied this to the facts to make its decision.⁵

Other issues

[9] The General Division decision sets out the relevant law – that an application for OAS must be made within 12 months of a claimant’s death.⁶ It also correctly states that the Tribunal has no legal authority to make exceptions to the law or to decide cases based on fairness, compassion or extenuating circumstances.⁷ Therefore, it made no error in law.

[10] The relevant facts are not in dispute. There is no suggestion that the General Division based its decision on an important factual error.

CONCLUSION

[11] The Claimant has a very sympathetic case. However, the General Division made no error upon which the Appeal Division can intervene.

[12] Therefore, the appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	A.B., Representative for the

⁴ General Division decision at para. 6
⁵ General Division decision at paras. 6,7
⁶ General Division decision at para. 6
⁷ General Division decision at para. 9

	<p>Appellant</p> <p>Ian McRobbie, Counsel for the Respondent</p>
--	--