



Citation: *VM v Minister of Employment and Social Development*, 2021 SST 784

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: V. M.

Respondent: Minister of Employment and Social Development
Representative: Joshua Toews

Decision under appeal: General Division decision dated July 22, 2021
(GP-20-2071)

Tribunal member: Kate Sellar

Type of hearing: On the Record

Decision date: December 22, 2021

File number: AD-21-259

Decision

[1] I am dismissing the appeal. The General Division did not make an error by summarily dismissing the Claimant's appeal.

Overview

[2] The Claimant applied for an Old Age Security (OAS) pension on May 11, 2015. His first payment was on January 4, 2016. Several years later on January 20, 2020, the Claimant asked the Minister to defer his OAS application and start the payments on his 70th birthday instead.

[3] This type of request is a voluntary deferral. In 2012, the law began to allow claimants to delay the start of their OAS pensions from the month they became eligible to a maximum of 60 months, up to the age of 70. In exchange, the monthly amount of the pension goes up for each month of pension delay (deferral).

[4] The Minister refused the Claimant's request for voluntary deferral because he did not make the request within 6 months after the day the pension started.¹

[5] The Minister explained that instead, the Claimant could stop receiving his pension temporarily, and that he could ask to reinstate it later. In that case, when the Minister reinstates the pension, the Claimant would not receive any retroactive payment.² The Claimant appealed to this Tribunal.

[6] The General Division summarily dismissed the Claimant's appeal. That means the General Division gave the Claimant time to make arguments in writing about why the General Division should not dismiss the appeal without a hearing. Then the General Division dismissed the appeal without a hearing because the appeal had no reasonable chance of success.

¹ The Minister explains this in the reconsideration letter at GD2-4.

² The Minister explains this in a letter at GD2-9.

[7] The Claimant appealed the General Division's decision to the Appeal Division. I must decide whether the General Division made an error by summarily dismissing the appeal.³

[8] I find that the General Division did not make an error by summarily dismissing the appeal. The arguments the Claimant raises about problems with the General Division decision do not amount to an error. The Claimant's request to defer the OAS application was bound to fail.

Issue

[9] The issue in this appeal is:

- a) Did the General Division make an error by summarily dismissing the Claimant's appeal?

Analysis

[10] First, I will describe my role on the Appeal Division in terms of reviewing General Division decisions.

[11] Next, I will explain what it means when the General Division summarily dismisses an appeal (as it did in this case).

[12] Finally, I will explain how I have reached the conclusion that the General Division did not make an error in this appeal.

Reviewing General Division Decisions

[13] The Appeal Division does not give the Claimant and the Minister a chance to re-argue the case from the beginning. Instead, the Appeal Division reviews the General Division's decision to decide if it contains errors.

[14] I can only address three types of errors:

³ The only possible errors I can consider are listed in the *Department of Employment and Social Development Act* (DESD Act), section 58(1).

- errors of fact,
- errors of law, and
- errors the General Division made because not provide a fair process (or made an error relating to the powers that it has).⁴

Summary Dismissal

[15] The General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.⁵ The issue is whether it is plain and obvious on the record that the appeal is bound to fail.

[16] The question is not whether the Tribunal must dismiss the appeal after considering the facts, the case law, and the parties' arguments. Instead, the question is whether the appeal is destined to fail regardless of the evidence or arguments that the claimant might provide at a hearing.⁶

– No error by summarily dismissing the appeal

[17] The General Division did not make an error by summarily dismissing the Claimant's appeal. The General Division applied the facts to the law. The Claimant's appeal was bound to fail, regardless of any arguments the Claimant might provide at a hearing.

[18] Voluntary deferral became available in 2012. The OAS Act allows claimants to request a cancellation of a pension.⁷ The OAS Regulations explain that the claimant shall make the request to cancel the pension to the Minister in writing no later than six months after the day on which the pension payments started.⁸ If the Minister receives the request in time and grants the voluntary deferral, then the claimant has 6 months to

⁴ DESD Act, section 58(1).

⁵ DESDA Act, section 53(1); see also see also the Federal Court's decision in *Miter v Canada (Attorney General)*, 2017 FC 262.

⁶ The Tribunal explained this in a case called *AZ v Minister of Employment and Social Development*, 2018 SST 298.

⁷ *Old Age Security Act (OAS Act)*, section 9.3(1).

⁸ *Old Age Security Regulations (OAS Regulations)*, section 26.1(1).

repay any amount of the pension already received. Then the Minister treats the application as though the Claimant never made it. The Minister treats the pension as though it was never payable.⁹

[19] According to a case at the Federal Court, the government was concerned for claimants who might have been approved for or started receiving their pensions around the time the voluntary deferral program began. Those claimants have chosen to defer their pensions if they had known about this option when they applied or when the Minister first approved their applications. So, the 2012 budget allowed people to cancel their pension as of March 1, 2013. To cancel a pension, claimants had to make the request within six months of starting the pension.¹⁰ I will call this the six-month time limit.

[20] The Claimant notes that the law allowed for voluntary deferral just two years before he applied for the OAS. He says the change was not widely publicized and nothing in the application warned him that he had an option to defer the start of his OAS pension. He says the failure to account for these circumstances amounts to a lack of fair process.¹¹

[21] The Minister argues that the Claimant has not raised an argument that could amount to an error by the General Division that I could review or fix at the Appeal Division.¹²

[22] In my view, the General Division did not make an error by summarily dismissing the appeal. The Claimant's appeal was bound to fail. While I understand that the Claimant did not know that he had the option to delay his pension, there is no legal route to allow him to benefit from voluntary deferral. He was outside the six-month time limit and there is no extension for that.

⁹ OAS Act section 9.3(2) and OAS Regulations section 26.1(2).

¹⁰ In *Pike v Canada (Attorney General)*, 2019 FC 135 (CanLII), the Federal Court of Appeal Confirmed that this six-month time limit comes from a combination of section 9.3(1) of the OAS Act and section 26.1(1) of the Old Age Security Regulations.

¹¹ AD1B-4.

¹² AD4.

[23] The Claimant understands the six-month time limit and its application, but argues that it is unfair to apply in a circumstance like his – the law was relatively new when he applied for the OAS pension and he did not know what his options were.

[24] However, the General Division did not have the option of considering the Claimant's circumstances and then refusing to apply the six-month time limit. The question is not about whether the Claimant knew or ought to have known about voluntary deferral. The Claimant's knowledge of the program is not relevant. There is no avenue in the law for the General Division to decide that the six-month time limit does not apply to the Claimant.

[25] This is not the result the Claimant wants. I can understand why the Claimant would prefer to have the benefit cancelled and restarted at age 70 in order to benefit from voluntary deferral. However, there is no legal path to achieve that goal.

[26] I have the power to identify and correct errors the General Division makes. The General Division did not make an error by summarily dismissing the appeal. The Claimant's appeal was bound to fail, regardless of what additional evidence or arguments he might have made at any hearing. He was well outside the six-month deadline for cancelling his pension.

Conclusion

[27] I dismiss the appeal. The General Division did not make an error that I can address.

Kate Sellar
Member, Appeal Division