Citation: *YA v Minister of Employment and Social Development*, 2022 SST 83

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Y. A.
Representative:	D. C.
Respondent:	Minister of Employment and Social Development
Representative:	Jared Porter

Decision under appeal:	General Division decision dated December 15, 2021 (GP-21-1631)

Tribunal member:	Neil Nawaz
Type of hearing:	On the Record
Decision date:	February 10, 2022
File number:	AD-22-2

Decision

[1] The appeal is dismissed.

Overview

[2] This appeal is about what it takes to make an application under the *Old Age Security Act* (OAS Act).

[3] The Claimant, Y. A., mailed an application for the Guaranteed Income Supplement (GIS) to Service Canada at some point in June 2020. Service Canada stamped the application as received on July 2, 2020 and subsequently approved it effective August 2019. According to Service Canada, this first payment date—11 months before the application date—was the earliest permitted by the law.

[4] The Claimant thought that his GIS should have started a month earlier. He appealed Service Canada's determination of his first payment date to the Social Security Tribunal's General Division. He argued that, although Service Canada did not receive his application until July, he had actually mailed it in June.

[5] The General Division summarily dismissed the Claimant's appeal because it was not satisfied that the appeal had a reasonable chance of success.

[6] The Claimant is now appealing the summary dismissal to the Tribunal's Appeal Division. He insists that Service Canada received his application before July 2, 2020. He alleges that it was not processed and date-stamped until July 2, 2020 due to COVID-19 preventive measures. He maintains that Service Canada did not make him aware of any other option to submit his application except by mail.

[6] I have decided that there is no need for an oral hearing in this case. The issues are clear, and so are the relevant facts and the applicable law. This decision is based on my review of the documents already on file—the Claimant's submissions, as well as the information that was available to the General Division.

Issues

[7] Last month, I called a pre-hearing conference to discuss the issues in this case.[1] At the conference, I summarized the General Division's rationale for summarily dismissing the Claimant's appeal. I also outlined the four grounds of appeal to the Appeal Division, which require the Claimant to show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.[2]

[8] I told the Claimant that the law appears to precisely define the point at which an application is made—that is, when Service Canada receives it, not when the applicant sends it. I advised the Claimant that his best chance of succeeding on appeal depended on his showing that the General Division ignored evidence that Service Canada had received the application in June but had, for whatever reason, not date-stamped it until the following month. I gave the parties an opportunity to make additional written submissions on this question, and both took advantage of that opportunity.[3]

[9] As I see them, the issues in this appeal are as follows:

- Did the General Division apply the correct test for summary dismissal?
- Do any of the Claimant's reasons for appealing have merit?

Analysis

[10] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the decision must stand.

---

[1] Recording of pre-hearing conference held on January 26, 2022.
[2] *Department of Employment and Social Development Act* (DESDA), section 58(1).
[3] See letter from the Minister's representative dated January 28, 2022 (AD02) and email from the Claimant's representative dated February 4, 2022 (AD03).

The General Division applied the correct test for summary dismissal

[11] In my view, the General Division disposed of the Claimant's appeal in an appropriate way. In its decision, the General Division correctly stated that it could summarily dismiss an appeal if it had no reasonable chance of success.[4] I am satisfied that the General Division understood the legal test and properly applied it to the facts.

[12] The threshold for summary dismissal is high.[5] It is not enough to consider the merits of a case in the parties' absence and then find that the appeal cannot succeed. A decision-maker must determine whether it is **plain and obvious** on the record that the appeal is bound to fail.[6] The question is **not** whether the decision-maker must dismiss the appeal after giving full consideration to the facts, the case law, and the parties' arguments. Rather, the question is whether the appeal is **destined to fail**, regardless of whatever evidence or arguments might be submitted at a hearing.

[13] In this case, the General Division dismissed the Claimant's appeal because of a rule that says an application is made when it is received, not when it is sent. In doing so, the General Division correctly applied a high threshold, concluding that the appeal had "no reasonable chance of success." For reasons that I will explain in more detail, it was plain and obvious on the record that the Claimant was bound to fail.

None of the Claimant's reasons for appealing have merit

[14] I don't see how the General Division made any errors in coming to its decision. The General Division reviewed the record and concluded that the Claimant submitted his application on July 2, 2020. I see no reason to interfere with this conclusion.

---

[4] General Division decision, paragraph 4, citing DESDA section 53(1).
[5] *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; *Breslaw v Canada (Attorney General)*, 2004 FCA 264.
[6] *Fancy v Canada (Attorney General)*, 2010 FCA 63.

– **The law precisely defines when an application is made**

[15] Section 3(2) of the *Old Age Security Regulations* says that an application is "deemed to have to have been made only when an application form completed by or on behalf of an applicant is received by the Minister."

[16] The wording of this provision is clear. It is the act of receiving the application, not sending it, that puts it into effect. The word "only" suggests that there is no mechanism to make an application other than getting it into the hands of the Minister or one of her authorized agents, such as Service Canada.

– **The Claimant's attempts to deliver his application in June are irrelevant**

[17] At the General Division, the Claimant maintained that he mailed his application in the middle of June but that it was mislaid, either by Canada Post or by Service Canada, for up to two weeks.[7]

[18] In its decision, the General Division addressed this claim but decided that it did not have any bearing on the outcome of the appeal. The General Division concluded that it was not enough to send, or attempt to send, an application.

[19] I don't see how the General Division erred in coming to this conclusion.

[20] The General Division correctly recognized that the law leaves no ambiguity about when an application is made. To be valid, an application has to be received by the Minister. In this case, the fact that the Claimant mailed his application in June was immaterial if it didn't arrive at its destination until the following month.

[21] I offered the Claimant's representative an opportunity to show that the General Division disregarded evidence that his client's application was delivered to Service Canada in June but was somehow been mislaid until July 2, 2020. The representative responded with a letter listing three Service Canada locations in Halifax where he says

[7] See Claimant's notice of appeal to General Division dated July 27, 2021, GD1-4.

he attempted to drop off the Claimant's application. The letter said that each attempt was unsuccessful because the locations were closed due to COVID-19 restrictions.

[22] Unfortunately, this information does not help the Claimant. First, it amounts to nothing more than a fuller version of a story that the General Division already considered and rejected. Second, the information did not change the fact that, whether the Service Canada locations were open or closed, the law obliged the Claimant to deliver his application to the Minister or her agents by one means or another.

[23] The Claimant says that he was unaware his application could have been delivered by alternative means such as email, but this point is also irrelevant. As written, the law is strict and makes no allowance for a prospective claimant's lack of familiarity with the application process. The law also makes no contingencies for unforeseen events, such as public health emergencies, that might impede Canadians from accessing government services.

– **The Claimant's allegations of mislaid mail are speculative and, in any case, can't be considered**

[24] The Claimant also argues that, since a large organization such as Service Canada receives large volumes of mail, some of it was bound to occasionally go missing.

[25] Again, this argument does not help the Claimant because it is simply an elaboration of a point that he already raised at the General Division. In its decision, the General Division briefly referred to the Claimant's suggestion that his application might have sat untouched in a Service Canada office.[8] However, the General Division presumably rejected that suggestion for lack of evidence. For my part, I can't consider whether such a suggestion has any merit because the Appeal Division's mandate is limited to considering four specific types of error. However, I will say that, if I were permitted to consider the suggestion on its merits, I would likely find it speculative at best.

[8] See General Division decision, paragraph 8(a).

– **Both the General and Appeal Divisions must follow the letter of the law**

[26] The Claimant argues that he did his best to submit his application in June but was unable to do so through no fault of hid own.

[27] I can understand the Claimant's frustration. Unfortunately, this argument cannot succeed.

[28] The Claimant's representative insists that he made at least three attempts to deliver his client's application to various Service Canada outlets, only to find that they were closed due to COVID restrictions. He says that he mailed the Application in mid-June only to have either Canada Post or Service Canada sit on it for two weeks.

[29] However, none of this matters as long as the application was date-stamped in July. The General Division is required to follow the letter of the law. It was not permitted to consider any extenuating circumstances around the Claimant's application. Neither am I. However much we might sympathize with the Claimant, we cannot ignore the explicit terms of the OAS Act and it associated regulations to simply give him what he wants.[9]

Conclusion

[30] The Claimant has not shown that the General Division erred when it found that he was not entitled to an additional retroactive GIS payment.

[31] The appeal is therefore dismissed.

Member, Appeal Division

[9] *Minister of Human Resources Development v Tucker*, 2003 FCA 278.