



Citation: *KS v Minister of Employment and Social Development*, 2023 SST 1317

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** K. S.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** General Division decision dated June 13, 2023  
(GP-22-713)

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**Tribunal member:** Kate Sellar

**Decision date:** **October 3, 2023**

**File number:** AD-23-843

## Decision

[1] I'm refusing the Claimant leave (permission) to appeal. The appeal will not go ahead. These are the reasons for my decision.

## Overview

[2] K. S. (Claimant) applied for an *Old Age Security* (OAS) pension in March 2015.<sup>1</sup> In June and again in July that year, the Minister of Employment and Social Development (Minister) asked for more information.<sup>2</sup> The Claimant didn't respond. In December 2015, the Minister wrote again, explaining that it cancelled the Claimant's application because it wasn't complete.<sup>3</sup>

[3] In June 2020, the Claimant asked the Minister to reconsider its decision.<sup>4</sup> Before the Minister responded to that request, the Claimant submitted a second application for an OAS pension on October 2, 2020.<sup>5</sup>

[4] On November 18, 2020, the Minister sent a letter saying it was denying the Appellant's reconsideration request from June 2020.<sup>6</sup> A few days later, on November 21, the Minister sent another letter saying the Claimant's second application had been approved effective November 2019.<sup>7</sup>

[5] The Claimant appealed to this Tribunal because she wants her OAS payments to start earlier. The General Division dismissed the appeal, finding that the Claimant's payments started as early as the OAS Act allowed under the circumstances.

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<sup>1</sup> See GD1-12 and following.

<sup>2</sup> See GD2-8 and GD2-10.

<sup>3</sup> See GD2-11.

<sup>4</sup> See GD2-15 and following.

<sup>5</sup> See GD2-20 and following.

<sup>6</sup> See GD2-47.

<sup>7</sup> See GD2-49.

## Issues

[6] The issues in this appeal are the following:

- a) Is there an arguable case that the General Division made an error of fact by ignoring the reasons the Claimant didn't follow up on her 2015 OAS application?
- b) Does the application set out evidence that wasn't presented to the General Division?

## I'm not giving the Claimant permission to appeal

[7] I can give the Claimant permission to appeal if their application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact;
- made an error applying the law to the facts.<sup>8</sup>

[8] I can also give the Claimant permission to appeal if their application sets out evidence that wasn't presented to the General Division.<sup>9</sup>

[9] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

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<sup>8</sup> Section 58.1(a) and (b) of the *Department of Employment and Social Development Act* (Act).

<sup>9</sup> See section 58.1(c) of the Act.

**There's no arguable case that the General Division made an error of fact by ignoring the evidence about the Claimant's reasons for failing to follow up on the 2015 OAS application.**

[10] The Claimant argues that the General Division should have found that her OAS benefits started earlier than November 2019, given that she first applied in March 2015. She agrees that she didn't respond to the Minister's requests for more information to complete that 2015 application. She argues that the additional information wasn't necessary. She also explained why she didn't respond to the Minister's request. The Claimant was experiencing a sad and difficult time in her life after her husband's death.<sup>10</sup>

[11] The Claimant hasn't raised an arguable case for an error of fact by the General Division, so I can't give her permission to appeal. The General Division only had the jurisdiction to hear an appeal of the Minister's reconsideration decision on the second application she made.<sup>11</sup> So even though the Claimant had reasons for not following up on that first application, the General Division couldn't consider those reasons to change the date her payments started.

**No new evidence**

[12] The Claimant hasn't provided any new evidence, so that is not a basis on which I can grant permission to appeal either.

[13] I'm satisfied that the General Division didn't ignore or misunderstand any of the facts.<sup>12</sup> The General Division had to apply the OAS Act and its regulations. The Claimant's OAS application was approved on October 2, 2019. As a result, the earliest payments could start was November 2019.<sup>13</sup> The General Division applied the OAS Act

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<sup>10</sup> See AD1-4 for the Claimant's arguments on appeal.

<sup>11</sup> See sections 27.1(1) and 28(1) of the *Old Age Security Act* (OAS Act).

<sup>12</sup> Completing this kind of review at the Appeal Division is consistent with the requirements in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

<sup>13</sup> See section 8(2) of the *Old Age Security Act* and section 5(2) of the *Old Age Security Regulations*. See also paragraph 10 in the General Division decision.

to the Claimant's situation. There was no other path to any earlier start date for the OAS benefits that the General Division could consider in this appeal.

## **Next Steps**

[14] The Claimant once argued the Minister lost an application she made in June 2020. If the Claimant wants the Minister to investigate that possible administrative error, she can raise that directly with Service Canada.<sup>14</sup> This Tribunal doesn't have the jurisdiction to decide things about possible administrative errors by Service Canada.<sup>15</sup>

## **Conclusion**

[15] I refused to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division

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<sup>14</sup> See paragraphs 16 and 17 in the General Division decision.

<sup>15</sup> See section 32 of the OAS Act.