



[TRANSLATION]

Citation: *MC v Minister of Employment and Social Development*, 2023 SST 1691

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. C.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated
May 8, 2023 (GP-22-1833)

Tribunal member: Jude Samson

Decision date: November 27, 2023

File number: AD-23-692

Decision

[1] I am refusing the Applicant, M. C., permission to appeal. This means that the appeal won't proceed.

Overview

[2] The Applicant applied for the Allowance for the Survivor in April 2019. The Minister of Employment and Social Development (Minister) approved his application and granted him the maximum retroactive pension allowed under the *Old Age Security Act* (OAS Act); in other words, for the 11 months before the date of his application.

[3] The Applicant asked the Minister to reconsider its decision and grant him a larger retroactive pension. In particular, the Applicant argues that he was eligible for the Allowance for the Survivor from his 60th birthday and that the Minister should have invited him to apply for the Allowance at that time. He says that the Canada Revenue Agency had all the information necessary to establish his eligibility for the Allowance.

[4] The Minister refused the Applicant's request for reconsideration.

[5] The Applicant appealed the Minister's decision to the Social Security Tribunal's General Division. The General Division dismissed the appeal, saying that it had to follow the rules set out in the OAS Act.

[6] The Applicant now wants to appeal the General Division decision to the Appeal Division. But, I find that the appeal doesn't raise an arguable case that the General Division made an error recognized by law. Also, the Applicant hasn't presented any new evidence. So, I have no choice but to refuse permission to appeal.

Issues

[7] The issues are the following:

- a) Could the General Division have made an error by dismissing the appeal even though the Minister didn't present any arguments to it?

- b) Could the General Division have made an error by ignoring some of the evidence?

I am not giving the Applicant permission to appeal

[8] I can give the Applicant permission to appeal if, in his application, he raised an arguable case that the General Division:

- failed to provide a fair process
- decided an issue that it didn't have the power to decide, or failed to decide an issue that it should have decided
- misinterpreted or misapplied the law
- made an error about the facts¹

[9] I can also give the Applicant permission to appeal if his application has evidence that wasn't presented to the General Division.²

– **It is clear that the General Division didn't make an error by dismissing the appeal, even without arguments from the Minister**

[10] The Tribunal is required to apply the law, regardless of the parties' level of involvement. It isn't authorized to give a default judgment; that means deciding the case in one party's favour because the other didn't show up.

[11] So, I find that this argument doesn't raise an arguable case that the General Division made an error recognized by law.

¹ See sections 58(1)(a) and 58(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

² See section 58(1)(c) of the DESD Act.

– **It is clear that the General Division didn't make an error by ignoring some of the evidence**

[12] The Applicant argues that the General Division ignored evidence he showed the Canada Revenue Agency that he was receiving survivor's benefits from the province of Quebec. He says these factors are relevant because the Allowance for the Survivor and the survivors' benefits are very similar. So, when the Canada Revenue Agency became aware that the Applicant was receiving the survivors' benefits, it should have provided more information about the Allowance.

[13] The General Division didn't ignore the Applicant's evidence. These factors relate to issues that are beyond the Tribunal's jurisdiction. The General Division explained this limitation in its decision and at a case conference.³

[14] In short, the Tribunal is required to apply the law. It can't grant benefits to a person under the OAS Act because of something the Canada Revenue Agency did or failed to do. In addition to the difference between the Minister and the Canada Revenue Agency, even the Minister has no obligation to warn a person of a deadline or consequence established by law.⁴

[15] If the General Division had accepted the Applicant's argument, it would have had to ignore the legislative provisions that set out the maximum retroactive pension that an applicant can receive based on the date of their application.⁵ The General Division doesn't have these kinds of powers.

[16] So, I find that these arguments don't raise an arguable case that the General Division made an error recognized by law.

³ See para 10 of the General Division decision, and the summary of the case conference (GD5).

⁴ See *Canada (Minister of Human Resources Development) v Reisinger Estate*, 2004 FC 893 at para 18; and *Dalgleish v Canada (Attorney General)*, 2018 FC 275.

⁵ See section 21(9)(a) of the *Old Age Security Act* (OAS Act).

[17] In addition to the Applicant's arguments, I have reviewed the file and the General Division decision.⁶ But, I haven't found any other reasons for granting permission to appeal.

Conclusion

[18] In summary, the appeal doesn't raise an arguable case that the General Division made an error recognized by law. Also, the Applicant hasn't presented any new evidence.

[19] As a result, I am refusing the Applicant permission to appeal. This means that the appeal will not proceed.

Jude Samson
Member, Appeal Division

⁶ The Federal Court has said that I must do this in *Griffin v Canada (Attorney General)*, 2016 FC 874; and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.