



Citation: *AA v Minister of Employment and Social Development*, 2024 SST 82

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. A.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated December 29, 2023
(GP-23-464)

Tribunal member: Kate Sellar

Decision date: January 26, 2024

File number: AD-24-63

Decision

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

Overview

[2] A. A. (Claimant) was granted an Old Age Security (OAS) pension on May 10, 2020, with an effective date of June 2020.

[3] The Claimant didn't apply for this pension. The Minister of Employment and Social Development (Minister) auto-enrolled the Claimant.

[4] The Claimant asked the Minister to reconsider its decision on June 16, 2022, almost two years later. On January 5, 2023, the Minister refused to reconsider its decision because the time limit to do so had passed and the Claimant was too late. It also said that a person may request cancellation of a pension "no later than six months after the day on which payment of the pension begins."¹

[5] To receive more time from the Minister to request reconsideration, the Claimant had to meet four criteria. He had to show the Minister that:²

- He had a reasonable explanation for being late;
- He always meant to ask the Minister to reconsider its decision (this is called a "continuing intention");
- The reconsideration request has a reasonable chance of success; and
- Giving the Claimant more time wouldn't be unfair to another party.

¹ Minister's Reconsideration Decision Letter dated January 5, 2023 at GD2-8-9.

² See sections 74.1(3) and (4) in the *Canada Pension Plan Regulations*.

[6] The Claimant appealed to this Tribunal. The General Division confirmed that the Claimant's request for reconsideration was late. Accordingly, the General Division considered whether the Minister exercised its discretion judicially when it refused to give the Claimant more time to request a reconsideration. The General Division explained that if the Minister does any of the following, then it didn't exercise its discretion judicially:

- acted in bad faith;
- acted for an improper purpose or motive;
- considered an irrelevant factor;
- ignored a relevant factor.³

[7] The General Division concluded that the Minister had acted judicially when it refused to give the Claimant more time to request reconsideration.

Issues

[8] The issues in this appeal are:

- a) Has the Claimant raised any argument for an error by the General Division that has a reasonable chance of success?
- b) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

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

- didn't follow a fair process;

³ See paragraph 18 in the General Division decision.

- 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.⁴

[10] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.⁵

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

The Claimant hasn't raised any argument about an error by the General Division that has a reasonable chance of success

[12] The Claimant has made a series of arguments about errors that he says the General Division made, as follows:

- The General Division failed to consider the problems with auto-enrolling people in OAS when they are in the Claimant's situation (that is, they are working and will be subject to 100% of the benefit being clawed back, and lower payments from OAS later).
- The General Division ignored the reason the Claimant delayed in requesting reconsideration, which had to do with the COVID-19 pandemic (both in terms of work pressures and his ability to attend a Service Canada location in-person).
- The General Division ignored or failed to consider how long the Minister took to respond to his request for reconsideration, which calls into question the fairness of enforcing strict timelines running against him.⁶

⁴ See section 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).

⁵ See section 58.1 (c) in the Act.

⁶ See AD1.

[13] None of these arguments have a reasonable chance of success on appeal, so I cannot grant permission to appeal.

– **There’s no arguable case for an error by failing to discuss the problems with OAS auto-enrollment**

[14] The Claimant has raised a series of problems with auto-enrolling people for the OAS. He acknowledges that this approach benefits some people (particularly those with low incomes) and can reduce administrative burden for the Minister. However, he argues auto-enrolling him was a problem because the Minister already knew (or ought to have known) that the full benefit would be clawed back because of his income. Auto-enrollment, he says, merely reduced his overall benefit and put the onus on him to correct the problem by requesting not to be auto-enrolled. The Claimant says that the Minister acted in bad faith by auto-enrolling him for OAS, given his circumstances.

[15] There’s no arguable case that the General Division ignored this issue. In fact, the General Division considered the Claimant’s argument about auto-enrollment in some detail.⁷ The General Division found that the Minister did not need to consider the effect of the auto-enrollment, given the following:

- The Minister sent the Claimant letters about the auto-enrollment with contact information and online resources if he was confused. The Claimant did not contact the Minister for clarification.
- After the Minister auto-enrolled the Claimant, he still had six months to request to cancel the OAS.

[16] Given those facts, the General Division concluded that the problems the Claimant had with auto-enrollment were not a relevant factor that the Minister ignored.

[17] The Claimant hasn’t raised an arguable case for an error by the General Division. The General Division considered the argument about the role that auto-enrollment could have played in the Minister’s exercise of discretion. The Claimant hasn’t shown that he

⁷ See paragraphs 21 to 24 in the General Division decision.

has a reasonable chance of success by arguing the General Division ignored this issue or got the facts wrong about how auto-enrollment worked in his situation.

– **There’s no arguable case for an error by failing to consider the reason the Claimant was late requesting reconsideration**

[18] The Claimant argues that the General Division failed to consider the evidence he gave about the reason he was late requesting reconsideration. The Claimant explained that work was very busy for him during the pandemic, and that Service Canada centres were closed at one point. He did not attend a Service Canada centre until 2022 because of the pandemic.

[19] The General Division noted in its decision that the Claimant explained he didn’t correct the auto-enrollment once he became aware of it because he was extremely busy at work and didn’t want to enter a Service Canada centre due to the COVID-19 pandemic.⁸ The General Division was only considering whether the Minister acted judicially when looking at the reason the Claimant was late and it did that. Therefore, I cannot conclude that the General Division ignored or misunderstood this information.

[20] The Claimant hasn’t raised an arguable case for an error by the General Division that has a reasonable chance of success.

– **No arguable case for an error by failing to consider how long the Minister took to respond to the Claimant**

[21] The Claimant argues that the General Division made an error of fact by ignoring evidence about how long the Minister took after the Minister auto-enrolled the Claimant and he requested that they reconsider.

[22] The General Division didn’t discuss any delay on the Minister’s part. However, that fact doesn’t help establish an arguable case that the General Division made an error.

⁸ See paragraph 11 in the General Division decision.

[23] The General Division is presumed to have considered all the evidence, even if it doesn't discuss every piece of evidence in the decision. The Claimant can overcome that presumption by showing that the evidence was important enough that the General Division needed to discuss.⁹

[24] In my view, the time that the Minister took to respond to the request for reconsideration isn't relevant to the question the General Division had to decide, so it's not an error of fact for the General Division to ignore it. The General Division was only deciding whether the Minister acted judicially when applying the factors for more time. The amount of time the Minister took to respond to the reconsideration is not a factor the General Division needed to consider, nor is it relevant to the factors the Minister had to consider about giving the Claimant more time.

No new evidence

[25] The Claimant hasn't set out any new evidence that wasn't already presented to the General Division, so new evidence cannot form the reason for permission to appeal.

Conclusion

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

Kate Sellar
Member, Appeal Division

⁹ See *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498.