



Citation: *AC v Minister of Employment and Social Development and ZC*, 2025 SST 199

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: A. C.

Respondent: Minister of Employment and Social Development

Added Party: Z. C.

Decision under appeal: General Division decision dated October 22, 2024
(GP-23-913)

Tribunal member: Kate Sellar

Decision date: **March 5, 2025**

File number: AD-25-61

Decision

[1] I'm granting the Claimant, A. C., an extension of time to apply to the Appeal Division. However, I'm refusing to give the Claimant leave (permission) to appeal. The appeal will not proceed. These are the reasons for my decision.

Overview

[2] The Claimant applied for an Old Age Security (OAS) allowance in May 2018. He said he was married on his application. The Minister of Employment and Social Development (Minister) approved his application since the Claimant said (and signed a statutory declaration stating) he was married.

[3] The Minister says that the Claimant called Service Canada saying he was separated. The Claimant provided a letter and a notarized document saying he and the Added Party separated in December 2017 and reconciled in August 2021.

[4] Based on this information, the Minister wrote a letter to the Claimant in September 2021. It explained that because he was separated from the Added Party, he should not have got the allowance from April 2018 to August 2021. Because he got money he wasn't entitled to, he was overpaid. He has to pay back the overpayment.

[5] The Claimant asked the Minister to reconsider its decision. He thought the Minister would have been aware of the change in his marital status because he thought all government agencies shared information. He also thought his repayment amounts were too high. The Minister's assessment of the overpayment didn't change on reconsideration.

[6] The Claimant appealed to this Tribunal. The General Division dismissed the Claimant's appeal. The General Division decided that the Claimant didn't prove he was eligible for the allowance from April 2018 to August 2021 because he was separated from the Added Party during that time.

Issues

[7] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) Will the Claimant receive an extension of time to appeal?
- c) Is there an arguable case that the General Division failed to provide the Claimant with a fair process because the hearing went ahead without his participation?
- d) Does the application set out evidence that wasn't presented to the General Division?

Analysis

The application was late

[8] The Claimant had 90 days from the day the General Division communicated its decision to apply to the Appeal Division.¹

[9] The General Division decision is dated October 22, 2024. The Claimant stated that he received his decision on "2023-Nov-2024."² The Claimant applied to the Appeal Division on January 28, 2025. It appears that the General Division sent the decision to the Claimant by email and by mail on October 23, 2025. Accordingly, the Claimant had until January 21, 2025 to appeal. He was about a week late.

I'm giving the Claimant an extension of time to appeal

[10] Since the Claimant is not more than a year late, I can give him an extension of time if he has a reasonable explanation for the delay.³ The Claimant contacted the

¹ See section 57(1)(b) in the *Department of Employment and Social Development Act* (Act).

² See AD1-1.

³ See section 27(2) of the *Social Security Tribunal Rules of Procedure* for the Tribunal's power to provide an extension of time where there is a reasonable explanation for the delay in filing the application.

Tribunal on January 7, 2025 stating that he had been in the hospital. The file contains multiple references to the Claimant's poor health.

[11] I'm satisfied that the Claimant's poor health is a reasonable explanation for his late appeal. Accordingly, I'm giving him an extension of time. Next, I need to consider whether I can give the Claimant permission to appeal.

I'm not giving the Claimant permission to appeal

[12] 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;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact; or
- made an error applying the law to the facts.⁴

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

[14] 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 an arguable case that the General Division failed to provide him with a fair process because he couldn't connect to the teleconference hearing and the General Division didn't reschedule the hearing.**

[15] The Claimant argues that the General Division proceeded in a way that was unfair. He says that he was unable to connect to the teleconference hearing. He explained that he called the general phone number for the Tribunal, but the hearing

⁴ See section 58.1(a) and (b) in the Act.

⁵ See section 58.1(c) in the Act.

wasn't rescheduled. The General Division issued a decision, and deductions started after the appeal period lapsed.⁶

[16] When a claimant raises a concern about fairness, the ultimate questions are:

- whether that claimant knew the case they had to meet and had a chance to respond; and
- whether that claimant had an impartial decision maker consider the case fully and fairly.⁷

[17] The General Division provided a detailed and thorough explanation about why it refused to reschedule the hearing a seventh time after the Claimant didn't attend as scheduled.⁸ The General Division summed up the situation as follows:

The [Claimant] and the Added Party's filing deadline ended over a year ago – August 15, 2023. Neither party filed any information during their right of reply (October 27, 2023). I have let the [Claimant] have multiple opportunities to participate in the hearing at a later date. I have offered the [Claimant] the chance to participate in writing. I have rescheduled the hearing six times. I have explained to the [Claimant] that he needed a medical note to show why he could not participate in the hearing. He didn't provide one.⁹

[18] The Claimant hasn't raised an arguable case for a failure to provide him with a fair process.

[19] The Claimant's trouble connecting to the hearing alone doesn't give rise to an arguable case for a failure by the General Division to provide a fair process to the Claimant. The invitation to the hearing (which was rescheduled multiple times already) included the phone number to call if a party experiences trouble connecting. According

⁶ See AD1-2 for the Claimant's arguments. The phone logs and email correspondence from the Claimant are attached to this decision for the parties. They show the Claimant emailing the Tribunal the morning of the hearing; calling the day of the hearing (long after the hearing start time); and calling on January 7, 2025.

⁷ See paragraph 10 in *Kuk v Canada (Attorney General)*, 2024 FCA 74.

⁸ See paragraphs 10 through 20 in the General Division decision.

⁹ See paragraph 20 in the General Division decision.

to the decision, the General Division member waited for the Claimant for 30 minutes. The Claimant didn't call the Tribunal's main line until after that time. In any event, the Claimant emailed earlier in the morning to ask that the hearing be rescheduled, but he didn't follow the instructions to provide a medical note to explain why he was unable to attend the hearing.

[20] The fact that the General Division didn't reschedule the hearing for a seventh time doesn't give rise to an arguable case for a failure to provide the Claimant with a fair process. As the General Division explained in the decision, it reschedules hearings when it is necessary to ensure a fair hearing.¹⁰ The General Division had:

- rescheduled on multiple occasions;
- offered to proceed with a written hearing;
- given the Claimant a year to file materials before the hearing;
- given the Claimant notice of the need for a medical note to explain why he was unable to rescheduling the hearing.¹¹

[21] In the context of all of those circumstances, I cannot conclude that refusing to reschedule the hearing again interfered with the Claimant's ability to know the case to be met and to respond.

– **No new evidence**

[22] The Claimant hasn't provided any evidence that wasn't already presented to the General Division, so new evidence cannot form the basis for permission to appeal.

¹⁰ See paragraph 19 in the General Division decision.

¹¹ See paragraphs 10 to 20 in the General Division decision.

[23] In his application form, the Claimant stated that he didn't believe the General Division had the affidavit about his reconciliation.¹² However, the affidavit appears to be set out in the record and referenced in the General Division.¹³

[24] I've reviewed the record.¹⁴ I'm satisfied that there's no arguable case that the General Division ignored or misunderstood any important evidence that could have affected the outcome for the Claimant.

[25] The General Division explained that it's the Claimant who must show that he was entitled to the allowance. To get that benefit, a person must be:

- 60 to 64 years of age; and
- the spouse or common-law partner of a pensioner getting the guaranteed income supplement (GIS).

[26] If the spouses become separated, the Minister suspends the payments at the third month of separation.¹⁵ As the General Division noted, the only issue was whether the Claimant was separated from and reconciled with the Added Party. I see no possible error of fact or of law in the General Division's work here that could justify giving the Claimant permission to appeal.

Asking Service Canada to cancel the debt

[27] If repaying the debt would result in undue hardship to the Claimant, nothing in this decision would impact his ability to contact Service Canada directly to request that the Minister cancel (remit) the overpayment under section 37(4)(c) of the OAS Act.

¹² See AD1-3.

¹³ See paragraphs 8 and 35 in the General Division decision, specifically referencing the information at GD10.

¹⁴ For more on the Appeal Division completing this type of review, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

¹⁵ See paragraphs 21 to 23 in the General Division decision.

Conclusion

[28] I granted the Claimant an extension of time. However, I refused to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division