Federal Court  Cour fédérale

Date: 20190131

Docket: T-359-18

Citation: 2019 FC 135

Ottawa, Ontario, January 31, 2019

PRESENT: The Honourable Mr. Justice Norris

BETWEEN:

KENNETH PIKE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. OVERVIEW

[1] The applicant, Kenneth Pike, seeks judicial review of a decision of the Appeal Division of the Social Security Tribunal refusing his application for leave to appeal a decision of the General Division of the same Tribunal. The question at issue before those bodies was whether Mr. Pike should have been permitted to cancel his Old Age Security pension so that he could then take advantage of the option of deferring it, even though he did not ask to cancel his pension within the required time.

[2] I have considerable sympathy for Mr. Pike. He has represented himself throughout this matter and I commend his efforts to rectify a situation which he believes, with some justification, to be unfair. However, as I will explain, there is no legal basis upon which I can interfere with the decision of the Appeal Division. As a result, I must dismiss this application.

II. BACKGROUND

[3] In the 2012 Federal Budget, the Government of Canada introduced the Voluntary Deferral of the Old Age Security [OAS] pension. Starting July 1, 2013, individuals could delay the start of their OAS pension from the month they became eligible to receive it for a maximum of 60 months up to the age of 70. In exchange, the monthly amount of the pension would be increased actuarially by a factor of 0.6% for each month the pension is deferred, up to a maximum of 36% at age 70. Once an individual started receiving his or her OAS pension, it would be paid at the increased amount for the rest of that person's life. The deferral option could also benefit individuals who were still working when they became eligible to receive an OAS pension and who, depending on their income, might otherwise simply end up paying the pension back in taxes.

[4] Recognizing that there could be individuals who had been approved for or had begun receiving their pensions around the time of these changes and who might have deferred their pensions had this option been offered to them when they applied or were approved, the 2012 budget also permitted individuals to cancel their pensions as of March 1, 2013. However, a request to cancel one's pension had to be submitted within six months of the date the first payment was issued. This right to cancel a pension within six months of its commencement is established through the combined operation of subsection 9.3(1) of the *Old Age Security Act*,

RSC 1985, c O-9 [*OAS Act*] and subsection 26.1(1) of the *Old Age Security Regulations*, CRC, c 1246 [*OAS Regulations*]. It should be noted that neither the *OAS Act* nor the *OAS Regulations* provide for an extension of the six month time limit. (These and other pertinent provisions are set out in the Annex to these reasons.)

[5] Also recognizing that individuals who had already applied to receive their OAS pension might not have been aware of the recent changes (because the information was not included in the OAS application they completed or the OAS Award Letter they received), in the week of June 24, 2013, the Government of Canada sent out a special notification letter. This letter was sent to approximately 280,000 individuals "who are currently in pay or awaiting payment from January 2013 to December 2013." The letter advised recipients to provide written notification if they did not wish to receive their OAS pension at that time. Individuals who cancelled their pensions within time would then be able to take advantage of the voluntary deferral option.

[6] Mr. Pike applied for his OAS pension in March 2013. He asked that it begin when he turned 65. His application was approved. Neither the application form Mr. Pike submitted nor the award letter he received said anything about the option of deferring the commencement of his OAS pension, even though it had been adopted by Parliament and would become available before Mr. Pike started receiving his pension.

[7] Mr. Pike began receiving his pension in February 2014, the month after he turned 65. However, because he was still working (as an electrical foreman), his tax rate was such that he paid the entire amount of his OAS pension back in taxes.

[8] In April 2015, Mr. Pike wrote to request that his OAS pension be cancelled. He explained that he had only recently learned that he could have deferred the start date of his pension and that he wished to do so because he was still working.

[9] Karen Suckling, the employee of Service Canada who dealt with the request initially, reviewed the forms Mr. Pike had provided. She confirmed that the information sheet which accompanied the version of the application form Mr. Pike had used (from January 2012) did not have the updated deferral information on it. As a result, Mr. Pike "may not have been aware of it" (even though the information was available on the Service Canada web site and in the media). The information sheet was not updated with the new information until October 2013.

[10] There was some uncertainty on the part of Service Canada over how to deal with Mr. Pike's request. A colleague suggested to Ms. Suckling that the request be submitted to "the unit that handles reconsiderations over 90 days" because "the client may qualify under that criteria [*sic*]." (Under section 27.1 of the *OAS Act*, a request for reconsideration by the Minister is usually required to be submitted within 90 days of the decision in question but extensions can be permitted if warranted.) Ms. Suckling was further advised that "if the recon[sideration] unit won't accept it you will have to deny the client based on the fact that he sent his request to [*sic*] late and that the required information was on our Service Canada site & that he did request a start date of the month following his 65th birthday."

[11] The record before this Court does not contain any communications between Ms. Suckling and the reconsideration unit.

[12] Eventually, Ms. Suckling wrote to Mr. Pike on June 5, 2015, advising him that his pension could not be cancelled because his request to do so had been received more than six months after he began receiving his pension. Mr. Pike did not receive this letter. For the next few months, he continued to write to Service Canada and even visited a local office in Fredericton trying to get someone to acknowledge and deal with his request to cancel his pension. On October 21, 2015, he was finally provided with a copy of the June 5, 2015 letter.

[13] By letter dated November 14, 2015, Mr. Pike asked to have the decision to refuse his request to cancel his pension reconsidered. In his letter, Mr. Pike explained that he was seeking reconsideration of the decision because the deferral option was not made available to him when he applied for his OAS pension, nor was he made aware of it when he was told that his application had been accepted.

[14] The request for reconsideration was refused by letter dated November 20, 2015. The letter described the deferral option that had been created in the 2012 budget. It also described the steps that were taken to notify individuals who might not have been aware of this option when they applied for or began receiving their pensions – in particular, the special notification letter that was sent out in June 2013. The letter then stated:

> Since your application for the Old Age Security Pension was received by our office on March 6, 2013 and processed on March 21, 2013, this special notification letter would have been sent to you.
>
> On April 21, 2015 you submitted a written request to cancel your Old Age Security Pension in order to defer until a later date. We denied that request on June 5, 2015 because your request was received more than six months after you started receiving the pension.
>
> This decision has been maintained.

[15] Mr. Pike filed an appeal with the General Division. He submitted that the application form he filled out when he applied for his pension did not say that he could defer the start of his pension, this option was not mentioned in the letter he received confirming that his application had been accepted, and he had not received the special notification letter sent in June 2013.

[16] His appeal was dismissed by the General Division for written reasons dated January 20, 2017. The reasons of the General Division stated: "The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as set out in the OASA and the OAS Regulations, and is bound by decisions of the Federal Court." According to the reasons, the *OAS Act* and *Regulations* are clear that a pension cannot be cancelled after six months from its commencement. The reasons continued: "The Tribunal cannot use principles of equity or consider extenuating circumstances to grant more time to request cancellation of an OAS pension than is prescribed by the OASA and OAS Regulations." Thus, given that he made his request more than six months after his pension commenced, Mr. Pike could not cancel his pension.

[17] Mr. Pike then applied for leave to appeal this decision to the Appeal Division of the Social Security Tribunal.

III. DECISION UNDER REVIEW

[18] In a decision dated November 21, 2017, the Appeal Division of the Social Security Tribunal refused Mr. Pike's application for leave to appeal.

[19] The grounds of appeal that the Appeal Division may consider are set out in subsection 58(1) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [*DESDA*] as follows:

> 58 (1) The only grounds of appeal are that
>
> (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
>
> (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
>
> (c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[20] Under subsection 58(2) of the *DESDA*, the test for granting leave to appeal is whether the appeal has any reasonable chance of success.

[21] The Appeal Division determined that Mr. Pike's appeal had no reasonable chance of success. Regarding the central question of whether the General Division had erred in holding that Mr. Pike was not entitled to cancel his OAS pension even though he did not learn of this option until it was too late to do so, the Appeal Division held as follows:

> [9] The applicant argues that he is being treated differently, but this presupposes that the Respondent held a duty to inform him, as well as other Canadians, about the opportunity to defer an Old Age Security pension. There was no duty on the Respondent to inform the Applicant or others of the opportunity to defer the pension.
>
> [10] It is a well-known and widely accepted principle that ignorance of the law is not a defence and that it does not provide any excuse for a late application. Information regarding the availability of deferment of an Old Age Security pension was widely available at that time because the Government of Canada was proposing a sweeping overhaul of the Old Age Security pension to reflect societal changes, the most notable being raising the minimum age of entitlement to the pension from 65 to 67. The

> Applicant is unable to rely on the fact that he did not receive any notice of the deferment from the Respondent to make out a ground of appeal.

[22] Mr. Pike now applies for judicial review of this decision under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7.

IV. STANDARD OF REVIEW

[23] It is well-established that this Court reviews decisions of the Appeal Division denying leave to appeal on a reasonableness standard (*Tracey v Canada (Attorney General)*, 2015 FC 1300 at paras 21-23; see also *Atkinson v Canada (Attorney General)*, 2014 FCA 187 at paras 24-32). The reviewing court examines the decision for "the existence of justification, transparency and intelligibility within the decision-making process" and determines "whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47). These criteria are met if "the reasons allow the reviewing court to understand why the tribunal made its decision and permit it to determine whether the conclusion is within the range of acceptable outcomes" (*Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62 at para 16). The reviewing court should intervene only if these criteria are not met. It is not the role of the reviewing court to reweigh the evidence or to substitute its own view of a preferable outcome (*Canada (Citizenship and Immigration) v Khosa*, 2009 SCC 12 at paras 59 and 61). On judicial review, the Appeal Division is owed a high level of deference (*Hideq v Canada (Attorney General)*, 2017 FC 439 at para 8).

V. ISSUE

[24] The sole issue that arises here is whether the decision of the Appeal Division to refuse leave to appeal is reasonable.

VI. ANALYSIS

[25] The right to appeal a decision to the General Division is defined broadly in the *OAS Act*. Anyone who is "dissatisfied with a decision of the Minister made under section 27.1" may appeal the decision to the General Division (*OAS Act*, subsection 28(1)). The powers of the General Division on such an appeal are also defined broadly. Under subsection 54(1) of the *DESDA*, the General Division "may dismiss the appeal or confirm, rescind or vary a decision of the Minister… in whole or in part or give the decision that the Minister… should have given." Neither Act specifies the grounds on which the General Division may allow an appeal and interfere with a decision of the Minister.

[26] In the present case, the General Division took a strict view of the scope of its authority: all it is permitted to do is interpret and apply the provisions of the *OAS Act* and *OAS Regulations*; it may not consider principles of equity or extenuating circumstances in order to provide relief from the application of these provisions in a given case by, for example, extending a time limit in the absence of the express authority to do so. This limited scope of the General Division's authority is not stated expressly anywhere in the *DEDSA* but it has been endorsed by this Court (*Nadji v Canada (Attorney General)*, 2016 FC 885 at para 13). The Federal Court of Appeal took the same view in analogous circumstances prior to the creation of the Social Security Tribunal (*Granger v Canada (Employment and Immigration Commission)*, [1986] 3 FC 70, aff'd [1989] 1

SCR 141; *Canada (Attorney General) v Buors*, 2002 FCA 372 at paras 5-6; *Canada (Attorney General) v Alaie*, 2003 FCA 416 at para 5; *Canada (Attorney General) v Hamm*, 2011 FCA 205 at para 29). In particular, the law is clear that a body like the General Division cannot refuse to apply the law, whether on grounds of equity or having regard to extenuating circumstances.

[27] As I understand Mr. Pike's arguments on this application for judicial review, he advances two principal grounds challenging the decisions made by the two Divisions of the Social Security Tribunal. First, the General Division failed to observe a principle of natural justice because it decided his appeal on the basis of the written record and without hearing from him in person. Second, the Appeal Division's decision is unreasonable because it did not address the General Division's failure to resolve the factual conflict in the record concerning whether or not Mr. Pike received the special notification letter. As I will explain, neither argument can succeed.

[28] Looking first at the alleged failure to observe a principle of natural justice, it is not my role to assess how the General Division conducted the appeal. That is the responsibility of the Appeal Division. My role is to review any decision the Appeal Division makes regarding that issue. The difficulty for Mr. Pike, however, is that he did not raise this alleged failure to observe a principle of natural justice in his application for leave to appeal to the Appeal Division. As a result, the Appeal Division did not address this ground of appeal, and this means that there is no decision on the point for me to review.

[29] That being the case, I can only offer the following observations to assist Mr. Pike in understanding the proceedings before the two Divisions of the Social Security Tribunal. The General Division may decide an appeal on the basis of the documents and written submissions filed or it may hold a hearing (*Social Service Tribunal Regulations*, SOR/2013-60, section 28).

In this case, the General Division explained that it had decided the appeal based on the written record because, among other reasons, the issues under appeal were not complex, there were no gaps in the information in the file or any need for clarification of that information, and credibility was not a "prevailing issue." This is important because, in his written submissions to the General Division, Mr. Pike had raised squarely the issue of whether he had received the special notification letter sent in June 2013 or otherwise knew about the right to cancel his pension when he could have done so. One can understand Mr. Pike's frustration about how this issue was dealt with over the course of his dealings with Service Canada. However, what Mr. Pike may not have appreciated is that this factual dispute was effectively resolved in his favour by the General Division. Given the reasons the General Division provided for not conducting a hearing, it is apparent that the member was able to decide the appeal on the basis that Mr. Pike had not received the letter and did not otherwise know about the deferral option until shortly before he asked to cancel his pension in April 2015. However, even accepting Mr. Pike's statements about his lack of timely knowledge of the deferral option, the appeal nevertheless had to be dismissed because the General Division did not have the legal authority to grant him the relief he was seeking. In such circumstances, even if he had raised the issue earlier, Mr. Pike would have had some difficulty persuading the Appeal Division that the General Division had failed to observe a principle of natural justice.

[30] Turning to the reasonableness of the Appeal Division's decision, Mr. Pike's contention throughout has been that it is unfair to apply the six-month time limit for canceling his OAS pension when he did not know that this option was available to him until it was too late. As discussed above, the General Division concluded that it did not have the legal authority to give effect to such an argument. Mr. Pike's principal submission on this application for judicial

review is that the Appeal Division's decision is unreasonable because there was a conflict in the evidence concerning whether he had or had not been informed of the changes to the OAS pension scheme and the General Division failed to resolve this conflict before ruling against him.

[31] Once again, this issue turns out to be less significant than Mr. Pike understandably thought it was. I agree with Mr. Pike that the November 20, 2015 decision by Service Canada denying his request for reconsideration erroneously relied on a finding that the special notification letter "would have been sent" to him and, implicitly, that he must have received it. There is no direct evidence that this letter was ever sent to Mr. Pike. Given when he submitted his application for an OAS pension and when it was due to begin, it is not clear whether Mr. Pike would have been among those to whom the special notification letter was sent or not. In any event, even if this letter was sent to him, it should be evident to all that he did not receive it. However, for the reasons given by the General Division, this could not make any difference for his appeal to that body.

[32] For some reason, in denying leave to appeal, the Appeal Division saw fit to note that information about the changes to the OAS pension scheme was "widely available" to the public, at the very least implying that Mr. Pike should have known about the changes in the law. This is irrelevant. It does not matter whether Mr. Pike ought to have known about the changes or not. While the Appeal Division thus relied on an erroneous consideration, this does not render its decision unreasonable. The difficulty for Mr. Pike's position is that, even though he did not know about the changes in the law, the General Division could not extend the time to cancel the pension on this basis. To be clear, the General Division did not dismiss his appeal on the basis that he ought to have known about the changes. Given the limited scope of the legal authority of

the General Division, the Appeal Division's conclusion that there were no arguable grounds of appeal in relation to this issue is reasonable.

[33] This is sufficient to dispose of this application for judicial review. I will conclude, however, with two additional observations.

[34] First, while I have found that the Appeal Division's decision to refuse leave is reasonable, it was not appropriate for the Appeal Division to cite the principle that ignorance of the law is not a "defence" or an "excuse" in holding that Mr. Pike was not legally entitled to the relief he was seeking. This principle has nothing to do with this case. Mr. Pike did nothing wrong. Nothing that he did requires a defence or an excuse. His argument is that extenuating circumstances warrant granting him an extension of the usual time to cancel his OAS pension. This argument failed because the General Division does not have the legal authority to grant such relief and for no other reason.

[35] Second, without in any way commenting on the merits of such a request, I query whether this matter should not have been dealt with under section 32 of the *OAS Act* from the beginning rather than under section 27.1 of that Act.

[36] Section 32 of the *OAS Act* provides as follows:

> 32. Where the Minister is satisfied that, as a result of erroneous advice or administrative error in the administration of this Act, any person who has been denied a benefit, or a portion of a benefit, to which that person would have been entitled under this Act, the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the erroneous advice not been given.

[37] In dismissing Mr. Pike's appeal, the General Division relied on the principle that the Government of Canada is not under any obligation to warn an applicant of a deadline which is stated explicitly in the *OAS Act* and *Regulations*, citing *Canada (Human Resources and Development) v Reisinger (Estate)*, 2004 FC 893. Similarly, the Appeal Division stated that the Government was not under a duty to inform Mr. Pike (or anyone else, for that matter) of what the *OAS Act* and *Regulations* say about the option of deferring an OAS pension. Mr. Pike contends that even if these statements are true in general, they do not address the specific circumstances of his case. After the OAS pension scheme was changed in the 2012 budget, the Government actually recognized that some individuals could have been left with an erroneous view of the state of the law and the options available to them. This was because neither the application form they completed nor the award letter they received mentioned the changes that had recently been made to the OAS pension scheme. In an effort to address this problem in the interests of fairness to applicants, the special notification letter was sent. Mr. Pike did not receive that letter and he did not otherwise learn that deferral was an option until it was too late. As a result, during the six months after his pension commenced in February 2014 when he could have canceled his pension, he had proceeded in accordance with an erroneous understanding of his rights under the scheme, an understanding that was based on the application form he completed and the award letter he received. Neither of these documents mentioned the option of deferring his OAS pension, even though Parliament had created that option and it was about to take effect. (The forms were eventually revised to include information about delaying receiving one's OAS pension.)

[38] Mr. Pike argues that, in these circumstances, it is unfair to deny him the right to cancel his pension later than the law permits. For the reasons I have set out above, this argument could

not secure him the relief he sought before the Social Security Tribunal or on this application for judicial review. However, it should go without saying that this result does not foreclose the possibility of relief under section 32 of the *OAS Act*, given the distinct authority granted to the Minister by that provision. Indeed, at the hearing of this application, counsel for the respondent confirmed that, if Mr. Pike were to make a request for relief under section 32 of the *OAS Act*, an investigation would be undertaken and a decision under that provision would be made.

VII. COSTS

[39] Quite appropriately, the respondent did not seek costs on this application.

JUDGMENT IN T-359-18

THIS COURT'S JUDGMENT is that:

1. The application for judicial review of the decision of the Appeal Division of the Social Security Tribunal dated November 21, 2017, is dismissed.

2. No costs are ordered.

"John Norris"
Judge

ANNEX

Old Age Security Act, RSC 1985, c O-9:

Voluntary deferral – full monthly pension	**Report volontaire de la pension – pleine pension**
7.1 (1) If a person applies for their pension after they become qualified to receive a full monthly pension, the amount of that pension, as calculated in accordance with section 7, is increased by 0.6% for each month in the period that begins in the month after the month in which the person becomes qualified for that pension and that ends in the month in which the person's application is approved.	**7.1 (1)** Lorsqu'une personne présente une demande de pension après le moment où elle devient admissible à la pleine pension calculée à l'article 7, le montant de cette pension est majoré de 0,6 pour cent pour chaque mois de la période commençant le mois suivant celui où elle y devient admissible et se terminant le mois où sa demande de pension est agréée.
Voluntary deferral – partial monthly pension	**Report volontaire de la pension – pleine partielle**
(2) If a person applies for their pension after they become qualified to receive a partial monthly pension, the amount of that pension, as it is calculated in accordance with subsection 3(3) at the time that they become qualified for that pension, is increased by 0.6% for each month in the period that begins in the month after that time and that ends in the month in which the person's application is approved.	**(2)** Lorsqu'une personne présente une demande de pension après le moment où elle devient admissible à la pension partielle, le montant de cette pension, calculé au paragraphe 3(3) au moment où elle y devient admissible, est majoré de 0,6 pour cent pour chaque mois de la période commençant le mois suivant ce moment et se terminant le mois où sa demande de pension est agréée.
Greatest amount of pension	**Montant – pension partielle**
(3) A person who is qualified to receive a monthly pension shall, unless they decide otherwise, receive the greatest of the following amounts:	**(3)** La personne qui est admissible à une pension reçoit, à moins qu'elle en décide autrement, le plus élevé des montants suivants :
(a) the amount of the full monthly pension as it is	**a)** si elle est admissible à la pleine pension, le montant

increased under subsection (1), if the person is qualified to receive a full monthly pension,

(b) the amount of the partial monthly pension as it is increased under subsection (2), and

(c) the amount of the partial monthly pension as it is calculated under subsection 3(3) at the time that the person's application is approved.

de celle-ci, majoré au titre du paragraphe (1);

b) le montant de la pension partielle majoré au titre du paragraphe (2);

c) le montant de la pension partielle calculé selon le paragraphe 3(3) au moment où sa demande de pension est approuvée.

Limitation

(4) Despite subsections (1) and (2), the amount of a pension is not increased for any month

(a) before July 2013;

(b) after the month in which the person attains 70 years of age; or

(c) in which the person's pension would not be paid by virtue of subsection 5(3), or would be suspended under subsection 9(1) or (3), if the person were a pensioner.

Restrictions

(4) Malgré les paragraphes (1) et (2), le montant de la pension n'est pas majoré pour les mois :

a) précédant juillet 2013;

b) suivant le mois où la personne atteint l'âge de soixante-dix ans;

c) dans le cas d'un pensionné, au cours desquels la pension ne serait pas versée par l'effet du paragraphe 5(3) ou le service de la pension serait suspendu par l'effet des paragraphes 9(1) ou (3).

…

[…]

Request to cancel pension

9.3 (1) A pensioner may, in the prescribed manner and within the prescribed time after payment of a pension has commenced, request cancellation of that pension.

Demande d'annulation du service de la pension

9.3 (1) Durant la période et selon les modalités prévues par règlement, le pensionné peut, après le début du service de la pension, en demander l'annulation.

Effect of cancellation

(2) If the request is granted and the amount of any pension and related supplement and allowance is repaid within the prescribed time,

(a) the application for that pension is deemed never to have been made; and

(b) the pension is deemed for the purposes of this Act not to have been payable during the period in question.

…

Request for reconsideration by Minister

27.1 (1) A person who is dissatisfied with a decision or determination made under this Act that no benefit may be paid to the person, or respecting the amount of a benefit that may be paid to the person, may, within ninety days after the day on which the person is notified in writing of the decision or determination, or within any longer period that the Minister may, either before or after the expiration of those ninety days, allow, make a request to the Minister in the prescribed form and manner for a reconsideration of that decision or determination.

Reconsideration – penalty

(1.1) A person against whom a penalty has been assessed under section 44.1 or, subject to the regulations, any person

Effet de l'annulation

(2) Si la demande est agréée et que les sommes versées au titre de la pension, du supplément et de l'allocation sont remboursées dans le délai prévu par règlement :

a) la demande de pension est réputée n'avoir jamais été présentée;

b) la pension est, pour l'application de la présente loi, réputée ne pas avoir été à payer pendant la période en cause.

[…]

Demande de révision par le ministre

27.1 (1) La personne qui se croit lésée par une décision de refus ou de liquidation de la prestation prise en application de la présente loi peut, dans les quatre-vingt-dix jours suivant la notification par écrit de la décision, ou dans le délai plus long que le ministre peut accorder avant ou après l'expiration du délai de quatre-vingt-dix jours, demander au ministre, selon les modalités réglementaires, de réviser sa décision.

Demande de révision d'une pénalité

(1.1) La personne qui a été condamnée à verser une pénalité sous le régime de l'article 44.1 – ou, sous réserve

on their behalf, who is dissatisfied with the decision to impose a penalty or with the amount of the penalty may, within ninety days after the day on which the person is notified in writing of the decision or determination, or within any longer period that the Minister may, either before or after the expiration of those ninety days, allow, request the Minister in the prescribed form and manner to reconsider the decision or determination.

des règlements, quiconque de sa part –, et se croit lésée par la décision d'infliger une pénalité ou par le montant de la pénalité peut, dans les quatre-vingt-dix jours suivant la notification par écrit de la décision ou du montant, ou dans le délai plus long que le ministre peut accorder avant ou après l'expiration du délai de quatre-vingt-dix jours, demander au ministre, selon les modalités réglementaires, de réviser la décision ou le montant de la pénalité.

Decision of Minister

(2) The Minister shall, without delay after receiving a request referred to in subsection (1) or (1.1), reconsider the decision or determination, as the case may be, and may confirm or vary it and may approve payment of a benefit, determine the amount of a benefit or determine that no benefit is payable, and shall without delay notify, in writing, the person who made the request of the Minister's decision and of the reasons for it.

Décision du ministre

(2) Le ministre étudie les demandes dès leur réception; il peut confirmer ou modifier sa décision soit en agréant le versement de la prestation ou en la liquidant, soit en décidant qu'il n'y a pas lieu de verser la prestation. Sans délai, il notifie sa décision et ses motifs.

Appeal – benefits

28 (1) A person who is dissatisfied with a decision of the Minister made under section 27.1, including a decision in relation to further time to make a request, or, subject to the regulations, any person on their behalf, may appeal the decision to the Social Security Tribunal

Appels en matière de prestation

28 (1) La personne qui se croit lésée par une décision du ministre rendue en application de l'article 27.1, notamment une décision relative au délai supplémentaire, ou, sous réserve des règlements, quiconque pour son compte, peut interjeter appel de la décision devant le Tribunal de

established under section 44 of the *Department of Employment and Social Development Act*.

la sécurité sociale, constitué par l'article 44 de la *Loi sur le ministère de l'Emploi et du Développement social*.

…

[…]

Where person denied benefit due to departmental error, etc.

32 Where the Minister is satisfied that, as a result of erroneous advice or administrative error in the administration of this Act, any person has been denied a benefit, or a portion of a benefit, to which that person would have been entitled under this Act, the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the erroneous advice not been given or the administrative error not been made.

Refus de prestation dû à une erreur du ministère

32 S'il est convaincu qu'une personne s'est vu refuser tout ou partie d'une prestation à laquelle elle avait droit par suite d'un avis erroné ou d'une erreur administrative survenus dans le cadre de la présente loi, le ministre prend les mesures qu'il juge de nature à replacer l'intéressé dans la situation où il serait s'il n'y avait pas eu faute de l'administration.

Old Age Security Regulations, CRC, c 1246:

Cancellation of Pension or Supplement

26.1 (1) For the purposes of subsections 9.3(1) and 18.2(1) of the Act, a request for cancellation of a pension or supplement shall be made to the Minister in writing no later than six months after the day on which payment of the pension or supplement, as the case may be, begins.

(2) For the purposes of subsection 9.3(2) of the Act, the amount of any pension and

Annulation de la pension ou du supplément

26.1 (1) Pour l'application des paragraphes 9.3(1) et 18.2(1) de la Loi, la demande d'annulation du service de la pension ou du service du supplément, selon le cas, est présentée au ministre par écrit dans les six mois suivant la date où le service a débuté.

(2) Pour l'application du paragraphe 9.3(2) de la Loi, les sommes versées au titre de la

related supplement or allowance shall be repaid no later than six months after the day on which the request is granted.	pension, du supplément et de l'allocation sont remboursées dans les six mois suivant la date d'agrément de la demande.
(3) For the purposes of subsection 18.2(2) of the Act, the amount of any supplement and related allowance shall be repaid no later than six months after the day on which the request is granted.	**(3)** Pour l'application du paragraphe 18.2(2) de la Loi, les sommes versées au titre du supplément et de l'allocation sont remboursées dans les six mois suivant la date d'agrément de la demande.

Department of Employment and Social Development Act, SC 2005, c 34:

Appeal to Tribunal – General Division	***Appel au Tribunal – division générale***
…	[…]
Decision	**Décisions**
54 (1) The General Division may dismiss the appeal or confirm, rescind or vary a decision of the Minister or the Commission in whole or in part or give the decision that the Minister or the Commission should have given.	**54 (1)** La division générale peut rejeter l'appel ou confirmer, infirmer ou modifier totalement ou partiellement la décision visée par l'appel ou rendre la décision que le ministre ou la Commission aurait dû rendre.
Reasons	**Motifs**
(2) The General Division must give written reasons for its decision and send copies to the appellant and the Minister or the Commission, as the case may be, and any other party.	**(2)** Elle rend une décision motivée par écrit et en fait parvenir une copie à l'appelant et, selon le cas, au ministre ou à la Commission, et à toute autre partie.
Appeal Division	***Division d'appel***
…	[…]
Grounds of appeal	**Moyens d'appel**
58 (1) The only grounds of appeal are that	**58 (1)** Les seuls moyens d'appel sont les suivants :

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

a) la division générale n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;

b) elle a rendu une décision entachée d'une erreur de droit, que l'erreur ressorte ou non à la lecture du dossier;

c) elle a fondé sa décision sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

Criteria

(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

Critère

(2) La division d'appel rejette la demande de permission d'en appeler si elle est convaincue que l'appel n'a aucune chance raisonnable de succès.

Decision

(3) The Appeal Division must either grant or refuse leave to appeal.

Décision

(3) Elle accorde ou refuse cette permission.

Reasons

(4) The Appeal Division must give written reasons for its decision to grant or refuse leave and send copies to the appellant and any other party.

Motifs

(4) Elle rend une décision motivée par écrit et en fait parvenir une copie à l'appelant et à toute autre partie.

Leave granted

(5) If leave to appeal is granted, the application for leave to appeal becomes the notice of appeal and is deemed to have been filed on the day on which the application for leave to appeal was filed.

Permission accordée

(5) Dans les cas où la permission est accordée, la demande de permission est assimilée à un avis d'appel et celui-ci est réputé avoir été déposé à la date du dépôt de la demande de permission.

Social Security Tribunal Regulations, SOR/2013-60:

Decision or further hearing	**Décision ou avis d'audience**
28 After every party has filed a notice that they have no documents or submissions to file – or at the end of the applicable period set out in section 27, whichever comes first – the Income Security Section must without delay	**28** Une fois que toutes les parties ont déposé l'avis selon lequel elles n'ont pas de documents ou d'observations à déposer ou à l'expiration de la période applicable prévue à l'article 27, selon le premier de ces événements à survenir, la section de la sécurité du revenu doit sans délai :
(a) make a decision on the basis of the documents and submissions filed; or	**a)** soit rendre sa décision en se fondant sur les documents et observations déposés;
(b) if it determines that further hearing is required, send a notice of hearing to the parties.	**b)** soit, si elle estime qu'elle doit entendre davantage les parties, leur faire parvenir un avis d'audience.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-359-18
STYLE OF CAUSE:	KENNETH PIKE v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	FREDERICTON, NEW BRUNSWICK
DATE OF HEARING:	SEPTEMBER 11, 2018
JUDGMENT AND REASONS:	NORRIS J.
DATED:	JANUARY 31, 2019

APPEARANCES:

Kenneth Pike	ON HIS OWN BEHALF
Philipe A. Sarrazin	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Gatineau, Québec	FOR THE RESPONDENT