



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. L. v. Minister of Employment and Social Development*, 2018 SST 689

Tribunal File Number: AD-17-742

BETWEEN:

W. L.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: June 22, 2018

DECISION AND REASONS

DECISION

[1] The appeal is allowed. The matter is referred back to the General Division for reconsideration.

OVERVIEW

[2] W. L. (Claimant) separated from his wife in 1986, and they divorced in 2005. In 2005 Ms. L. applied for and obtained a division of unadjusted pensionable earnings for the period that she and the Claimant were married. This reduced the amount of the Claimant's retirement pension. Ms. L. passed away in 2015. The Claimant applied for a return of the pension credits that had been divided. The Minister of Employment and Social Development (Minister) refused the application.

[3] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division held a pre-hearing conference by telephone. After the pre-hearing conference, the General Division dismissed the Claimant's arguments that his rights under the *Canadian Charter of Rights and Freedoms* had been infringed, and summarily dismissed his appeal on its merits. The appeal is allowed because the General Division breached principles of natural justice by proceeding by teleconference despite the Claimant's hearing impairment and by summarily dismissing his appeal without notice.

ISSUES

[4] Did the General Division breach a principle of natural justice when it summarily dismissed the Claimant's claim without providing notice that it intended to do so?

[5] Did the General Division breach a principle of natural justice when it conducted the pre-hearing conference by telephone despite the Claimant's hearing impairment?

ANALYSIS

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that can be considered, namely that

the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.¹

[7] The principles of natural justice are concerned with ensuring that all parties to an appeal have the opportunity to fully present their legal case to the Tribunal, know and answer the legal case against them, and have the decision made by an impartial decision maker.

[8] The parties have agreed and I am satisfied that the General Division failed to observe the principles of natural justice for the reasons set out below.

Summary dismissal

[9] The DESD Act provides that the Tribunal must summarily dismiss a claim if it has no reasonable chance of success.² The *Social Security Tribunal Regulations* state that, before summarily dismissing an appeal, the Tribunal must give the claimant notice of its intention to do so and provide an opportunity for the parties to make submissions.³ The Claimant argues that the General Division failed to give him any notice that it intended to summarily dismiss his claim, and failed to provide any opportunity to make submissions on this issue. He argues that this was a breach of natural justice.

[10] The General Division decision states the following:

Since the Appellant has had notice of the request to dismiss and has had the opportunity to respond both in writing and orally, the Tribunal finds that there are special circumstances. Pursuant to subsection 3(1)(b) of the Tribunal Regulations [*sic*] the Tribunal has dispensed with the requirement of a notice of intent to summarily dismiss pursuant to section 22 of the Tribunal regulations [*sic*].

Since the Appellant does not raise any other issues on the appeal it should be summarily dismissed.⁴

¹ DESD Act, s. 58(1)

² DESD Act, s. 53

³ *Social Security Tribunal Regulations*, s. 22(1)

⁴ General Division decision, paras. 71 and 72

The General Division provided the Claimant with no notice that his claim would be dismissed on its merits. It provided no explanation of what constituted special circumstances or how such special circumstances could be relied on to dispense with notice that the Claimant's appeal would be dismissed on its merits. Consequently, the Claimant had no opportunity to respond to the case against him. This is a breach of natural justice. The appeal must be allowed on this basis.

Hearing by teleconference

[11] The *Social Security Tribunal Regulations* state that the Tribunal may hold hearings by written questions and answers; teleconference, videoconference or other means of telecommunication; or personal appearance.⁵ The General Division conducted the pre-hearing conference by teleconference; however, the Claimant is hearing impaired and wears hearing aids. He indicated on the hearing information form that he filed with the General Division that he could not participate in a teleconference because he relies on lip-reading and visual cues, and that conversing by telephone is difficult.⁶ Therefore, proceeding by teleconference impaired the Claimant's ability to hear and understand the pre-hearing conference. It impaired his ability to participate in this hearing. This is also a breach of natural justice in this case. The appeal must be allowed on this basis also.

CONCLUSION

[12] The appeal is allowed.

[13] The DESD Act sets out what remedies can be granted on an appeal.⁷ In this case, it is appropriate that the matter be referred back to the General Division for reconsideration because the Claimant has not had an opportunity to address the merits of his claim.

[14] Since the Claimant is hearing impaired and relies on lip reading and visual cues in addition to hearing aids, it is appropriate that any oral hearing be conducted in person. Any delay between seeing mouth movement and hearing what is spoken also causes the Claimant difficulty.

⁵ *Social Security Tribunal Regulations*, s. 21

⁶ GD7-23

⁷ DESD Act, s. 59(1)

[15] The Claimant has also requested that the appeal be heard by a different General Division member because he has difficulty hearing soft voices, and that all communication be sent to him by email.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	June 19, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	W. L., Appellant Marie-Andrée Richard, Counsel for the Respondent