



Social Security  
Tribunal of Canada  
[TRANSLATION]

Tribunal de la sécurité  
sociale du Canada

Citation: *J. B. v. Minister of Employment and Social Development*, 2018 SST 930

Tribunal File Number: AD-18-429

BETWEEN:

**J. B.**

Applicant/Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Shu-Tai Cheng

DATE OF DECISION: September 21, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] Leave to appeal the decision rendered by the General Division of the Social Security Tribunal of Canada on April 30, 2018, is granted.

[2] The appeal of this decision is allowed.

### **OVERVIEW**

[3] The Appellant, J. B., applied for an Old Age Security (OAS) pension in June 2013. The Respondent, the Minister of Employment and Social Development, approved the application and granted a 36/40th pension as of May 2014.

[4] The Appellant requested reconsideration regarding the issue of his residency during the period after September 2003. The Respondent rejected the request and upheld its original decision. The Appellant appealed this decision to the Tribunal.

[5] The Appellant submits that he is eligible for a full OAS pension. He claims the period from January 2007 to September 2013 as a period of Canadian residency, and he maintains that he has been a Canadian resident since then.

[6] The General Division decided the appeal on the record, without summoning the Appellant for a hearing. It found that the Appellant did not reside in Canada after 2003; the period from 2007 to 2013 could not be considered a period of residency; the Appellant's residency in Canada did not resume until October 2013; and, as a result, he is not eligible for a full OAS pension.

[7] In his application for leave to appeal, the Appellant submits that the General Division made a number of errors.

[8] The Respondent submits that the General Division failed to observe a principle of natural justice by deciding the appeal on the record without holding a hearing where the Appellant could be heard.

[9] The appeal is allowed because established case law recognizes that residency is an issue of fact that requires an examination of the individual's entire situation. The General Division should have at least heard the Appellant by teleconference.

## ISSUE

[10] Did the General Division fail to observe a principle of natural justice by making its decision without holding a hearing?

## ANALYSIS

[11] I find that the General Division failed to observe a principle of natural justice by making its decision without holding a hearing that would allow to the Appellant to testify.

[12] The parties submit that a hearing including an opportunity to testify before the General Division is necessary. They also submit that this hearing should take place before a different General Division member than the one who rendered the April 30, 2018, decision.

[13] The General Division rendered its decision on the record. As a result, the Appellant did not have a chance to explain his residency situation.

[14] The Federal Court has recognized on many occasions that residency is a question of fact that requires an examination of the individual's situation as a whole.<sup>1</sup>

[15] The Appellant wanted to present evidence in his testimony before the General Division, but he did not have the opportunity to be heard at a General Division hearing.

[16] As a result, by making its decision on the record, the General Division did not examine the Appellant's entire situation.

[17] For these reasons, I find that there is an arguable case that the General Division failed to observe the principles of natural justice and I grant leave to appeal.

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<sup>1</sup> *De Carolis v. Canada (Attorney General)*, 2013 FC 366, para. 28; *Canada (Minister of Human Resources Development) v. Ding*, 2005 FC 76, para. 58; *De Bustamante v. Canada (Attorney General)*, 2008 CF 1111, para. 37.

[18] Furthermore, I find that the General Division failed to observe the principles of natural justice by not giving the Appellant the opportunity to testify in these circumstances.

[19] In these circumstances, it is appropriate to grant leave to appeal and to allow the appeal at the same time. Proceeding in this way complies with ss. 2 and 3(1)(a) of the *Social Security Tribunal Regulations*.

[20] On review of the parties' submissions and of the file, I allow the appeal. In view of the principle of the right to be heard (*audi alteram partem*) and the presentation of evidence that will be necessary, it is appropriate to refer the matter back to the Tribunal's General Division.

[21] The parties submit that the hearing should take place before a different member of the General Division than the one who rendered the April 30, 2018, decision, but they have not explained this point of view. As a result, I find that this is not necessary.

## **CONCLUSION**

[22] Leave to appeal is granted.

[23] The appeal is allowed, and the matter is referred back to the General Division of the Social Security Tribunal of Canada.

Shu-Tai Cheng  
Member, Appeal Division