



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. S. v. Minister of Employment and Social Development*, 2016 SSTADIS 163

Date: May 5, 2016

File number: AD-15-1027

APPEAL DIVISION

Between:

S. S.

Appellant

and

**Minister of Employment and Social Development
(Formerly Minister of Human Resources and Skills Development)**

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

DECISION

[1] The Appeal is allowed.

[2] The matter is referred back to the General Division for reconsideration in accordance with the directions of the Appeal Division.

INTRODUCTION

[3] On July 23rd 2015 the General Division of the *Social Security Tribunal of Canada*, (the Tribunal), issued its decision summarily dismissing the Appellant's appeal. The Appellant has filed an appeal from that decision.

Pertinent Facts

[4] The Appellant had been granted a disability pension pursuant to the Canada Pension Plan. She later applied for and was granted Disabled Contributor's Child's Benefits for her three children. She applied for a greater retroactive payment but was refused. On appeal to the General Division, the Tribunal served the Appellant with a notice that it intended to dismiss her appeal summarily. Both the Appellant and the Respondent were given until July 17, 2015 to make submissions. The Tribunal received a letter in support of her application from the Appellant's Member of Parliament that was dated June 25, 2015. Subsequently, on July 17, 2015, the Tribunal received additional submissions from the Appellant. The Tribunal acknowledged receipt of the Appellant's submissions, which were on time.

[5] The General Division Member issued her decision on July 23, 2015. In her decision, the Member wrote that:-

[5] The Appellant was provided with notice that the General Division of the Tribunal planned to summarily dismiss her claim for retroactive payment of the Disabled Contributor Child's Benefits (sic) for her children, and provided her with a reasonable amount of time to respond to this. She filed no further documents in support of her claim. All of the documents filed with the Tribunal were considered in reaching this decision."

[6] The General Division proceeded to dismiss the appeal summarily.

GROUND OF THE APPEAL

[7] The Appellant did not cite a specific ground of appeal. She made allusions to breaches of her section 15 equality rights under the Canadian Charter of Rights and Freedoms. However, Charter issues were not raised at the General Division level, nor are they properly before the Appeal Division as they do not conform with the requirements for filing and service set out in section 20 of the *Social Security Tribunal Regulations*. SOR/2013 60, (the Regulations). Nonetheless, given that the circumstances of this case raise issues of procedural fairness, the Appeal Division finds that the appeal is based on subsection 58(1)(a) of the *Department of Employment and Social Development, (DESD), Act* namely that the General Division failed to observe a principle of natural justice.

Respondent's Submissions

[8] The Respondent concedes that the General Division erred when it issued its decision without considering the Appellant's submissions. Counsel for the Respondent takes the position that this was a breach of procedural fairness for which the appropriate remedy is that the Appeal Division should allow the appeal and refer the matter back to the General Division for redetermination by another Member. Counsel for the Respondent also submits that the parties should be allowed to make submissions prior to such redetermination.

ANALYSIS AND DECISION

[9] The Tribunal's procedure in respect to summary dismissals of appeals is set out at section 22 of the Regulations. Subsection 22(1) obliges the General Division to serve notice on an appellant prior to dismissing an appeal summarily. In addition, the subsection requires the General Division to give the appellant a reasonable amount of time to make submissions. Thus;

22. Notice to the Appellant – (1) Before summarily dismissing an appeal pursuant to subsection 53(1) of the Act, the General Division must give notice in writing to the appellant and allow the appellant a reasonable period of time to make submissions.

[10] Inherent in the requirement to allow an appellant a reasonable period of time to make submissions is the expectation that the decision-maker would consider those submissions. Whether through inadvertence or otherwise, this did not take place in the instant appeal. Therefore, the Appeal Division finds that the General Division breached its duty of fairness to the Appellant and breached paragraph 58(1) (a) of the DESD Act. Accordingly, the appeal is allowed.

DECISION

[11] The parties both submit that the appeal should be heard again. Having found that the General Division breached natural justice, and having allowed the appeal, the Appeal Division exercises its jurisdiction under section 59 of the DESD Act to refer the matter back to the General Division for determination by a different Member after allowing the parties a reasonable period of time in which to make submissions.

Hazelyn Ross
Member, Appeal Division