

Citation: *H. A. S. v. Minister of Human Resources and Skills Development*, 2014 SSTGDIS 22

Appeal No: GT-108494

BETWEEN:

H. A. S.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security – Appeal Abandoned

SOCIAL SECURITY TRIBUNAL MEMBER: Shane Parker

DATE OF DECISION: August 14, 2014

DECISION

[1] For the reasons below, the Tribunal finds that the appeal has been abandoned. The file has therefore been closed.

INTRODUCTION

[2] The Appellant applied for an Old Age Security (OAS) pension on May 5, 2009. The Respondent awarded her the pension at the full time rate of 40/40ths, effective June 8, 2011 (11 months retroactive to the date of application). The Appellant disagreed with the retroactivity period in this decision and asked the Respondent to reconsider. The Respondent maintained its initial decision and on November 27, 2009 the Appellant filed her Notice of Appeal with the Office of the Commissioner of Review Tribunals (OCRT). On April 1, 2013 the appeal was transferred to the General Division of the Social Security Tribunal of Canada (the Tribunal). However, since July 2014 the Tribunal has been unable to locate the Appellant and provide its notice of intent to summarily dismiss the appeal.

THE LAW

[3] Section 257 of the *Jobs, Growth and Long-term Prosperity Act* of 2012 states that appeals filed with the OCRT before April 1, 2013 and not heard by the OCRT are deemed to have been filed with the General Division of the Social Security Tribunal.

[4] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.

[5] The *Social Security Tribunal Regulations* (SST Regulations) became law on March 28, 2013. Section 22 of the SST Regulations states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[6] Paragraph 3(1)(a) of the SST Regulations states “[t]he Tribunal must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.”

[7] Subsection 3(2) of the SST Regulations provides that “[i]f a question of procedure that is not dealt with by these Regulations arises in a proceeding, the Tribunal must proceed by way of analogy to these Regulations.”

[8] Section 6 of the SST Regulations says that “[a] party must file with the Tribunal a notice of any change in their contact information without delay.”

ISSUE

[9] Whether the Appellant has abandoned the appeal?

EVIDENCE

[10] On April 1, 2013 the appeal was transferred from the OCRT to the Tribunal. On April 1, 2014 the Tribunal sent a letter to the Appellant at the mailing address on file, reiterating that the parties had up to 365 days from April 1, 2013 to file additional documents or submissions. As such, appeals were considered ready to proceed on April 1, 2014 or May 1, 2014. However, due to special circumstances, the parties were given an extension to file new documents or submissions during a delay period beyond that time, in accordance with the Tribunal’s new process. The Tribunal’s April 1, 2014 letter notifies the parties of their obligation under section 6 of the SST Regulations to advise the Tribunal of any changes to their contact information and that the failure to do so may have a detrimental impact on the appeal. Other correspondence in the Hearing File also informed the Appellant about the importance of notifying of any address change (see for example, letter from Service Canada dated August 10, 2009, at GT1-19; and from the OCRT dated January 21, 2013, at GT1-51).

[11] On June 3, 2014 the Tribunal sent a letter to the Appellant's mailing address on file, advising that the appeal was considered ready to proceed, and that it was soon to be assigned to a Tribunal Member.

[12] On July 3, 2014 a Notice of Intent to Summarily Dismiss letter (Notice) was sent to the Appellant by Priority Post to the following address: X X, X, New Brunswick, X. On July 22, 2014, the Notice was returned to the Tribunal and was marked "Return to Sender . . . Reason: Unclaimed".

[13] On July 24, 2014 the Notice was sent to the Appellant by regular mail (with a new deadline to respond) to the following address: X X, X, New Brunswick, X. On July 30, 2014 this Notice was also returned to the Tribunal and marked "Return to Sender. . . Moved/Unknown".

[14] On August 1, 2014 the Tribunal tried to contact the Appellant by telephone at the following numbers on file: XXX XXX XXXX - the number has been disconnected; and XXX XXX XXXX - no answer - no voicemail. On August 5, 2014 the Tribunal was unable to reach the Appellant at the second number above – phone rang several times but no answer and no voicemail.

[15] The Tribunal was unable to attempt to contact the Appellant by email because no email address was provided.

ANALYSIS

[16] Pursuant to section 22 of the SST Regulations, the Tribunal attempted to notify the Appellant in writing of the intent to summarily dismiss the appeal and allow a reasonable period of time to make submissions.

[17] Previously, the Appellant was notified by correspondence that was successfully delivered to the Appellant, of the obligation to inform Service Canada or the Tribunal of any changes to their contact information (GT1-19 and GT1-51). The Appellant has failed to do so, despite this being a legal obligation under section 6 of the SST Regulations as of March 28, 2013.

[18] Following internal procedures adopted by the Tribunal, multiple attempts have been made to deliver the Notice of Intent to Summarily Dismiss letter to the Appellant and to contact the Appellant by telephone. However, the Tribunal has been unsuccessful in delivering the Notice or locating the Appellant.

[19] The Tribunal is required to conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

[20] Given that the Appellant has failed to comply with the requirements of section 6 of the SST Regulations, the Tribunal finds that the Appellant has abandoned the appeal. The Tribunal proceeds in this manner under the authority of subsection 3(2) of the SST Regulations which allows the Tribunal to proceed by way of analogy in questions of procedure that are not dealt with in the SST Regulations.

CONCLUSION

[21] The Tribunal finds that the Appellant has abandoned the appeal and the file will be closed.

Shane Parker

Member, General Division