

**[TRANSLATION]**

**Citation: *G. T. v. Minister of Employment and Social Development*, 2015 SSTAD 546**

**Date: May 4, 2015**

**File number: AD-13-1258**

**APPEAL DIVISION**

**Between:**

**G. T.**

**Appellant**

**and**

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

**Respondent**

**Decision by: Shu-Tai Cheng, Member, Appeal Division**

**Decision made on the record on May 4, 2015**

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] On August 23, 2013, the General Division of the Social Security Tribunal of Canada (Tribunal) summarily dismissed the Appellant's appeal. The General Division found that the Appellant was not entitled to receive the Guaranteed Income Supplement (GIS) because she had a common-law partner during that period. The Respondent was therefore entitled to claim the overpayment received by the Appellant for that period.

[2] The Appellant asks that the matter be referred back to the Tribunal's General Division because she did not have an opportunity to be heard. The Tribunal received the Appellant's appeal request on October 22, 2013. The Appellant stated that she had received the decision of the Tribunal's General Division on September 9, 2013.

[3] The Appellant did not file written submissions apart from her appeal request.

[4] The Respondent's submissions were filed on October 3, 2014.

### **ISSUE**

[5] The Tribunal must determine whether it should dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division or confirm, rescind or vary the decision.

### **ANALYSIS**

[6] The parties made no submissions concerning the applicable standard of review.

[7] The Tribunal notes that the Federal Court of Appeal has held that the standard of judicial review applicable to a decision of a Board of Referees or an Umpire on questions of law is correctness (*Martens v. Canada (AG)*, 2008 FCA 240) and that the standard of review applicable to questions of mixed fact and law is reasonableness (*Canada (AG) v. Hallée*, 2008 FCA 159).

[8] A decision of the General Division is considered to be reviewable on the same standards as a decision of the Board of Referees.

[9] The grounds raised by the Appellant are that the appeal to the General Division was summarily dismissed without her having an opportunity to be heard at a hearing so she could more fully explain her current situation, the impact on her health, her financial situation and what brought her before the General Division.

[10] The Respondent's submissions note that the Appellant was given notice of the Tribunal's intention to summarily dismiss her appeal based on the facts on file and was invited to file written submissions explaining why her appeal should not be dismissed. The Appellant did not make any arguments to support her position that the General Division should not summarily dismiss her appeal.

[11] Subsection 53(1) of the *Department of Employment and Social Development Act* gives the General Division the power to summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success. The General Division has no obligation to hold an in-person hearing in a case in which the facts are not in dispute and the appeal has no reasonable chance of success.

[12] Under subsection 58(1) of the *Department of Employment and Social Development Act*, 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.

[13] The Tribunal's Appeal Division must be able to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is an error of law, fact or jurisdiction that may lead to the setting aside of the decision attacked.

[14] The Appellant is not raising any of the grounds of appeal set out in subsection 58(1) of the *Department of Employment and Social Development Act*. The fact that she did not have an in-person hearing is not in itself an error of law, fact or jurisdiction. The Appellant was given notice of the General Division's intention to summarily dismiss her appeal and was invited to file written submissions, which she did not do.

[15] The appeal request raises no other grounds.

[16] The General Division's decision notes the following:

[17] In this case, the Appellant's file indicates that she became a common-law partner in March 2007, after one year of cohabitating with someone. She did not inform the Minister of this change without delay. The legislation is clear. The Appellant should have received a GIS amount on the basis of her status of common-law partner for the period from March 2007 to January 2011. The Respondent is therefore entitled to claim the overpayment for that period.

[18] Concerning the submission that the Appellant informed the CRA of her change in marital status in 2007, the CRA is not the Minister according to the OAS Act. The OAS Act specifies that the Appellant must inform the Minister without delay. The Act does not provide that she can rely on the CRA to fulfill this duty on her behalf.

[19] Given the key facts and the relevant legislation, the Tribunal finds that the appeal has no reasonable chance of success.

[17] After reviewing the Appellant's appeal request, the Respondent's submissions, the file and the General Division's decision, and applying the standard of review applicable to questions of law, namely reasonableness, I conclude that the General Division's decision is reasonable and I dismiss the appeal.

## **CONCLUSION**

[18] The appeal is dismissed.

*Shu-Tai Cheng*  
Member, Appeal Division