



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. L. v. Minister of Employment and Social Development*, 2016 SSTADIS 231

Tribunal File Number: AD-16-306

BETWEEN:

M. L.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: June 24, 2016

REASONS AND DECISION

INTRODUCTION

[1] On November 30, 2015, the General Division (GD) of the Canada Social Security Tribunal (“the Tribunal”) summarily dismissed the Appellant’s appeal. The GD held as follows:

(a) There are two issues:

1. the Appellant’s claim that he is eligible for a full old age (OA) pension; and
2. the income from his Guaranteed Income Supplement (GIS);

(b) The Tribunal does not have jurisdiction to hear these two issues:

1. the Tax Court of Canada (“the TCC”) has rendered a decision with respect to the income and the GIS;
2. as regards the amount of the OA pension, the Appellant was granted a partial pension at the rate of 29/40 in 1998 and did not made a request to the Minister for a reconsideration under section 27.1 of the *Old Age Security Act*;

(c) The Appellant’s arguments do not directly address the jurisdictional questions and do not show that the Tribunal has jurisdiction to rule on the issues in this case; and

(d) The appeal has no reasonable chance of success.

[2] For these reasons, the GD dismissed the appeal.

History of the file

[3] In June 1997, the Appellant filed an application for an OA pension. The former Department of Employment and Social Development (“the Department”) approved a partial pension at a rate of 29/40, and that pension was granted to him starting in June 1997.

[4] In October 2003, the Appellant filed an initial GIS application, which was not approved. The Appellant filed another GIS application in April 2009. The second application was approved, but the underpayment request was denied. At issue here was an American pension that the Appellant denied having received. The Department determined and calculated the Appellant’s income including the American pension.

[5] The Appellant appealed to the Office of the Commissioner of Review Tribunals, one of the predecessors of this Tribunal.

[6] The Tribunal referred the OAS appeal application back to the TCC in September 2014.

[7] The TCC rendered a decision on March 25, 2015, holding that the Department had correctly determined the Appellant’s income and ordering the Tribunal to be informed of that decision.

[8] The GD sent a notice of its intention to proceed by summary dismissal on October 9, 2015. The notice stated: “If you find that this appeal should not be summarily dismissed, you must provide the Tribunal, no later than November 9, 2015, with detailed written submissions explaining why your appeal has a reasonable chance of success.”

[9] The Appellant submitted a letter and documents on October 22, 2015, and noted that he had met with a lawyer on November 18, 2015.

[10] On October 26, 2015, the Tribunal sent a letter to the parties informing them that it was “postponing the time limit for responding to its letter dated October 9, 2015, to December 9, 2015.”

[11] On November 19, 2015, the GD sent the parties a letter enclosing a copy of the TCC decision.

[12] In a letter dated November 26, 2015, the Department indicated that it considered that the only issue in the Tribunal's file was now settled (by the TCC's decision).

[13] The GD summarily dismissed the appeal on November 30, 2015.

[14] The Appellant replied to the Tribunal's letters in correspondence dated December 1 and 8, 2015. The Tribunal received those replies on December 17, 2015.

[15] The Tribunal replied to the appellant in a letter dated December 18, 2015, in which it noted that the GD had rendered a decision on November 30, 2015, and that the GD appeal file was consequently closed.

Appeal to the Appeal Division

[16] The Appellant submitted a letter on February 12, 2016, that the Tribunal treated as a notice of appeal to the Tribunal's Appeal Division ("the AD"). The letter contained the Appellant's submissions.

[17] The Department filed its submissions in April 2016. It contended that the GD's decision was not based on an erroneous finding of fact or of law. However, the GD allowed the Appellant until December 9, 2015, to file his submissions but rendered its decision on November 30, 2015. It submits that, "in view of this apparent failure to observe a principle of natural justice," it will not object to the matter being referred back to the GD for reconsideration.

ISSUES

[18] 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.

THE LAW AND ANALYSIS

Legislative provisions

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

[20] According to 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.

[21] The Tribunal must determine, in accordance with subsection 58(1) of the Act, whether the decision under review contains a question of law, fact or jurisdiction, or relating to a principle of natural justice.

DG's decision

[22] The GD rendered its decision on November 30, 2015.

[23] The Tribunal allowed the appellant until December 9, 2015, to file his submissions in response to the Tribunal's notice of its intention to proceed by way of summary dismissal.

[24] The decision was rendered before the time limit allowed the appellant.

[25] This constitutes a breach of a principle of natural justice: the right to be heard.

Appeal to the AD

[26] The Appellant contends that the GD's decision is based on errors of law and of fact or a breach of a principle of natural justice.

[27] The Respondent consents to the matter being referred back to the GD.

[28] There was a breach of natural justice.

[29] Having reviewed the parties' submissions and the docket, I am allowing the appeal. In view of the right to be heard and the possible need for evidence to be presented, it is appropriate to refer the matter back to the Tribunal's General Division.

CONCLUSION

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

Shu-Tai Cheng
Member, Appeal Division