Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *M. L. v. Minister of Employment and Social Development*, 2016 SSTGDIS 101

Tribunal File Number: GP-16-2261

BETWEEN:

M. L.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

DECISION BY: Jude Samson

DATE OF DECISION: December 9, 2016

REASONS AND DECISION

BACKGROUND

[1] The Appellant was born in Canada on May 8, 1932, but he lived in the United States for certain periods of time. Now 84 years old, he is experiencing a lot of financial hardship and has long been requesting that the benefits he has been receiving under the *Old Age Security Act* (OAS Act) be corrected.

[2] On June 12, 1997, the Appellant applied for his pension under the OAS Act (OAS pension) (GT1-41). On the application form, the Appellant was asked whether he had lived outside of Canada for more than six months and, if so, to list all the places where he had lived since birth. In response to that question, the Appellant submitted the following statement (GD1-43):

From (dd/mm/yyyy)	To (dd/mm/yyyy)	City or Town	Country
08/05/1932	01/11/1969	X, QC	Canada
01/11/1969	01/05/1985	X, FL	U.S.A.
01/05/1985	15/12/1994[1]	X, QC	Canada
18/12/1994	01/05/1997	X, FL	U.S.A.

[3] On June 16, 1998, the Respondent mailed a letter offering several options to the Appellant (GT1-95). In that letter, the Respondent indicated that, according to its assessment, the Appellant had accumulated 29 years, one month and eight days of Canadian residency since his 18th birthday. According to the Appellant's application and a minor subsequent revision, the periods the Respondent retained are from May 8, 1950 (date of the Appellant's 18th birthday), to November 1, 1969, and from May 1, 1985, to December 4, 1994 (GT1-308). In that letter, the Appellant was therefore offered the choice between:

[1] The Appellant then amended the date he left Canada, from December 15 to December 5, 1994, but this minor correction is inconsequential.

a) a partial pension at 29/40th of the full-time pension as of June 1997; or

b) a full-time pension, if the Appellant came back to live in Canada for one year.

[4] On June 22, 1998, the Appellant made his choice: he signed a paper confirming that he preferred to receive the partial pension at 29/40th of the full pension, with payment from June 1997 (GT1-307). The Appellant's OAS pension was approved on July 14, 1998, and released for payment from June 1997 (GT1-44). According to the Respondent, a letter was allegedly sent to the Appellant explaining the pension that he had been granted and giving him a right of reconsideration (GT2-8). Although this letter is absent from the record, there is no proof that the decision was contested. The Respondent indicates that the Appellant never exercised his right to appeal (GT1-35).

[5] Then, in 2003, the Appellant submitted an application for the Guaranteed Income Supplement (GIS), but it was denied. He submitted a second application for the GIS in 2009, and that one was approved initially, but an underpayment of $12,570.37 for the period from May 2008 to August 2009 was subsequently dismissed due to a lack of evidence with respect to restoring the Appellant's Canadian residency (GT1-29, 53 and 56).

[6] An investigation was therefore initiated to obtain more information on the Appellant's residency and to verify his income originating in the United States. According to the Respondent, the investigation demonstrated that the Appellant had come back to live in Canada as of October 2010 (he was therefore entitled to the GIS as of November 2010), and that he had income from the United States Social Security program that had to be considered.

[7] Even though the parties seem to acknowledge that the Appellant restored his residency in Canada as of October 2010, the Respondent explains that an error occurred and that the Appellant received GIS payments to which he was not entitled from September 2009 to June 2010. An overpayment was therefore created on the Appellant's account, and he was asked to pay back $7,826.70 (GT1-29 and 80). On October 6, 2011, the Appellant contested this payback request (GT1-78), and several communications followed in which the Respondent's agents attempted to apprise the Appellant of what had happened and to answer his questions (GT1-23, 26, 29, 35, 38).

[8] In these subsequent communications, the Respondent also confirmed that the amount of the Appellant's American pension had been added to his income for the purpose of calculating the GIS (GT1-23 and 29). The Appellant also contested this decision in a letter dated August 6, 2012 (GT1-20).

[9] The reconsideration decisions are mentioned in a letter from the Respondent dated December 17, 2012 (GT1-16). In that letter, the Respondent:

a) recovered the overpayment of $7,826.70 arising from an administrative error; and

b) upheld its decision with respect to income to use for calculating the GIS, namely, income from all sources, including taxable foreign income.

Procedural Background

[10] On March 5, 2013, the Appellant appealed the reconsideration decision before the Office of the Commissioner of Review Tribunals (GT1-321 to 331). In his notice of appeal, the Appellant (GT1-323 to 324):

a) denied having a foreign income; and

b) insisted that an investigation be conducted into the amount of his OAS pension, given the number of years he had spent in Canada after his 18th birthday.

[11] The appeal was transferred to the Tribunal in April 2013, as provided for under section 257 of the 2012 *Jobs, Growth and Long-term Prosperity Act*.

[12] Because one of the grounds for appeal that the Appellant had raised was related to income, the Tribunal referred the matter back to the Tax Court of Canada (TCC), where the Respondent was successful (GT11). After the TCC's decision had been rendered, another Tribunal member summarily dismissed the appeal. The Appellant contested this decision before the Appeal Division. The parties agreed to refer the matter back to the General Division due to a breach of a principle of natural justice.

[13] Upon review of the file by the undersigned, the Tribunal asked the Appellant the following questions in writing:

- Given that the Tax Court of Canada stated that the Minister had correctly determined the Appellant's income (GT11), what issue(s) must the Tribunal consider?
- Using the page numbers in the documents in the record (e.g. GT1-110), please identify specifically which decision made upon a reconsideration is subject to this appeal.
- Why are you appealing this decision? What errors does it contain?

[14] In response to these questions (IS3), the Appellant indicated that he had intended to resolve his OAS pension. He referred to the letter from June 16, 1998, in which there is a handwritten note indicating that he lived in Canada for the entire period until he left for the United States in December 1994, namely, a period of 44 years (not 29), one month and eight days (IS3-3). The Tribunal cites the Appellant's own words (IS3-7):

> [Translation] This is my application. It pertains to my old-age pension and not the [GIS] pension. For me, they are two different things, and this is the one that the Minister determined. For now, it is the OLD-AGE pension that I wish to correct. The correction to make is very simple. The number of years spent in CANADA before my entry into the UNITED STATES, which is 44 years and 6 months. The P GT1-10 document clearly proves this, and it shows where the error is. I was 18 years old on May 8, 1950, and provided (LIST) are the positions that I held in Quebec City during this time.

[15] The list of positions that the Appellant held in Quebec from 1948 to 1994 appears on pages IS2-3 and AD1-4. The Appellant claims that he has been requesting the correction of his OAS pension since 2010 and that, in the meantime, he has been advised to submit an application for the GIS, which created confusion between the two benefits.

ISSUE

[16] The Tribunal must decide whether the appeal should be summarily dismissed.

APPLICABLE LAW

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

[18] Section 22 of the *Social Security Tribunal Regulations* (Regulations) states that, before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and give the Appellant a reasonable period of time to make his submissions.

SUBMISSIONS AND ANALYSIS

[19] In compliance with section 22 of the Regulations, the Appellant was advised in writing of the Tribunal's intent to summarily dismiss the appeal and was allowed a reasonable period of time to make his submissions (IS0). His submissions were received by the Tribunal on November 4, 2016 (IS4).

[20] Although the background is long, the Tribunal's decision must hinge on the issues that the Appellant has raised:

a) Is the Respondent required to consider foreign income for the purposes of calculating the GIS? and

b) Did the Respondent miscalculate the years that the Appellant spent in Canada after his 18th birthday and before he left for the United States on December 5, 1994?

[21] The first issue was decided by the TCC, and the Court's decision is final and binding (OAS Act, subsection 28(2)). The TCC ruled in the Respondent's favour, and the Appellant is no longer contesting this decision.

[22] The second issue is a pension that was approved in 1998 and released for payment as of 1997, according to a choice that the Appellant made (GT1-307). In response to the Tribunal's question, the Appellant indicated that the Respondent's error is revealed in the letter, which dates back to June 1998 (IS3-3). The Respondent argues that the amount of the OAS pension to which the Appellant is entitled was not contested at the time and was not subject to a

reconsideration request. Given the evidence in the record, the Tribunal finds that the Respondent's observations in this respect are well founded.

[23] The Tribunal invited the Appellant to identify specifically which decision made after the reconsideration is the subject of this appeal. The issue is important because the OAS Act provides that a party who is dissatisfied with a decision by the Minister must first request a reconsideration of the Minister's decision (section 27.1). Furthermore, section 27.1 grants a delay of 90 days for the submission of this request for reconsideration.

[24] If a party is still dissatisfied after the reconsideration decision, section 28 of the OAS Act enables that party to appeal the decision before the Tribunal. The effect of these provisions is that the OAS Act does not enable the Tribunal to decide upon a matter unless the Minister made the decision upon a reconsideration.

[25] After a careful review of the evidence, the Tribunal must accept the Respondent's arguments. Whatever attempts the Appellant allegedly made since 2010, there is no reconsideration decision in the record that pertains to the issue of his years of Canadian residency before 1994. In the absence of such a reconsideration decision, the Tribunal has no jurisdiction to decide upon the matter that the Appellant has raised.

[26] Furthermore, the Appellant sets out "humanitarian" reasons: he is an elderly man with few resources who has contributed to the country's economic expansion for many years. Unfortunately, as a statutory entity, the Tribunal has only the powers conferred on it by its incorporating act. The Tribunal cannot use the principles of equity or consider "humanitarian" reasons to circumvent the requirements of the OAS Act.

CONCLUSION

[27] In closing, there are two decisions that were made after the reconsideration and that appear in the letter relevant to the record (GT1-16). In that letter, the Respondent:

a) recovered the overpayment of $7,826.70 arising from an administrative error; and

b) upheld its decision regarding the income to use for the purpose of calculating the GIS.

[28] As for the Tribunal, the initial decision was uncontested and the second issue was correctly referred back to the TCC. However, the Appellant's grounds for appeal raise a third issue: his Canadian residency before 1994, which could affect the amount of the OAS pension to which he is entitled. Because this issue was not subject to a reconsideration decision, the Tribunal does not have the authority to address it.

[29] The Tribunal carefully reviewed the documents in the appeal docket as well as the relevant statutory provisions. Nevertheless, the Tribunal determines that the only issue to decide upon was resolved by the TCC, where the Respondent was successful.

[30] Consequently, and despite the Tribunal's sympathy for the Appellant's situation, the appeal has no reasonable chance of success and is summarily dismissed.

Jude Samson
Member, General Division - Income Security