



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *The Estate of J. S. v. Minister of Employment and Social Development*, 2017 SSTADIS
314

Tribunal File Number: AD-15-955

BETWEEN:

The Estate of J. S.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: July 3, 2017

REASONS AND DECISION

INTRODUCTION

[1] On August 4, 2015, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Respondent had correctly determined J. S.'s (claimant) Guaranteed Income Supplement entitlement under the *Old Age Security Act* (OAS Act).

[2] The claimant filed a letter, on August 21, 2015, which was treated as notice of an appeal of the General Division decision.

[3] On October 19, 2015, the Tribunal advised the claimant that the income issue in his appeal was a matter for the Tax Court of Canada (TCC) under the *Income Tax Act*. Therefore, the Tribunal referred the appeal to the TCC pursuant to subsection 28(2) of the OAS Act.

[4] On June 26, 2016, the TCC advised the Tribunal that the referral to the TCC had been withdrawn. The Notice of Discontinuance filed with the TCC was signed by the representative of the claimant's estate.

[5] The claimant passed away on November 21, 2015, as indicated in a proof-of-death certificate filed with the TCC.

[6] On September 2, 2016, and again on June 13, 2017, the Tribunal asked the Appellant (now the claimant's estate) to provide a copy of proof of executorship in order for the Tribunal to process a withdrawal of the present appeal. The Tribunal's requests have not been answered.

[7] This appeal proceeded on the record for the following reasons:

- a) The Appeal Division member has determined that no further hearing is required.
- b) The requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness and natural justice permit.

ISSUES

[8] Should the Appeal Division treat the notice from the TCC as a withdrawal of this appeal?

[9] If not, then the Appeal Division must decide whether it should dismiss the appeal, render the decision that the General Division should have rendered, refer the case back to the General Division, or confirm, reverse or modify the General Division's decision.

THE LAW

[10] The Appellant is appealing a decision dated August 4, 2015, whereby the General Division summarily dismissed its appeal on the basis that it was satisfied that the appeal did not have a reasonable chance of success.

[11] No leave to appeal is necessary in the case of an appeal brought under subsection 53(3) of the *Department of Employment and Social Development Act* (DESD Act), as there is an appeal as of right when dealing with a summary dismissal from the General Division. Because no further hearing is required, this appeal before the Appeal Division is proceeding pursuant to paragraph 37(a) of the *Social Security Tribunal Regulations*.

[12] Subsection 58(1) of the DESD Act sets out the grounds of appeal as follows:

- 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 relevant provisions of the OAS Act, pertaining to incapacity and death of a claimant, are set out in sections 11, 13 and 28.

SUBMISSIONS

[14] The Appellant made no submissions pertaining to a withdrawal of the appeal.

[15] The parties made written submissions on the merits of this appeal.

ANALYSIS

[16] The Respondent argues that the Tribunal varied the General Division decision in whole and kept the appeal to the General Division open pending a TCC decision. Therefore, the appeal to the Appeal Division should be allowed and the General Division should keep its appeal file open pending a decision from the TCC.

[17] The claimant had made extensive submissions on the merits of his appeal. However, the Appellant has not replied to the Tribunal's requests since September 2016.

[18] The Appellant filed a copy of a death certificate and a Notice of Discontinuance with the TCC in June 2016. The TCC accepted these documents as well as the withdrawal of the matter referred to it.

[19] The Appellant was asked to provide proof of executorship in order for the Tribunal to process a withdrawal of this appeal.

[20] The Appellant did not respond to the Tribunal's requests to provide proof of executorship. Therefore, there is no one seeking to pursue the remaining issues in this appeal, if any, on behalf of the deceased claimant.

[21] Since the claimant's appeal was referred to the TCC in October 2015, the claimant passed away in November 2015, the Appellant provided a death certificate and Notice of Discontinuance for the TCC appeal, and the Appellant has not responded to the Tribunal's requests, this appeal is hereby dismissed.

CONCLUSION

[22] The appeal is dismissed.

Shu-Tai Cheng
Member, Appeal Division