



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *T. B. v. Minister of Employment and Social Development*, 2017 SSTADIS 351

Tribunal File Number: AD-16-1141

BETWEEN:

**T. B.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

and

**R. L.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: July 20, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] On August 30, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal. The General Division had determined the following:

- a) The Applicant retired in 2011, which would affect the year of payment, changing it from July 2012 to June 2013.
- b) She provided her 2012 income tax return on July 14, 2014.
- c) The deadline to submit her 2012 income tax return was June 30, 2014.
- d) Because the Applicant did not respect the deadline, the Respondent was under no obligation to consider her request.

### File Background

[2] The Applicant's spouse applied for the Guaranteed Income Supplement in March 2014 for 2012 (as well as for the following year, which is not the subject of this appeal). The Applicant was named in section C (marital status) of the application as the spouse.

[3] An income tax statement for 2012 was sent by the Respondent. The statement had been completed and signed by the Applicant and sent to the Respondent. The Respondent had received it on July 14, 2014.

[4] The Respondent did not approve the statement because it had not been provided within the time limit prescribed by the *Old Age Security Act* (OAS Act). The Applicant appealed this decision to the Tribunal in April 2015.

[5] On August 30, 2016, the Tribunal's General Division rendered a decision on the record.

[6] The Applicant requested leave to appeal to the Appeal Division on September 16, 2016.

## ISSUE

[7] Does the appeal have a reasonable chance of success?

## LAW AND ANALYSIS

[8] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESD Act), “An appeal to the Appeal Division may only be brought if leave to appeal is granted” and “The Appeal Division must either grant or refuse leave to appeal.”

[9] Subsection 58(2) of the DESD Act provides that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

[10] According to subsection 58(1) of DESD Act, the only grounds of appeal are the following:

- 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.

[11] The Tribunal will grant leave to appeal if it is satisfied that the Applicant has demonstrated that at least one of the aforementioned grounds of appeal has a reasonable chance of success.

[12] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of law, fact or jurisdiction, or relating to a principle of natural justice, the response to which might justify setting aside the decision under review.

[13] According to his reasons for appeal, the Applicant asserts that 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, i.e. paragraph 58(1)(c) applies.

[14] In particular, the Applicant submits that [translation] "the documents ... identified GD1-6 and GD2-14 ... clearly show that they were sent and received in March 2014" and that "this document references income ... from 2012 for Guaranteed Income Supplement payments for the period from July 2013 to June 2014."

[15] It is not up to the member of the Appeal Division who has to determine whether to grant leave to appeal to clarify the grounds of appeal or to reweigh and reassess the evidence submitted before the General Division. From my reading of the file and the General Division's decision, the reasons raised by the Applicant in her application were already raised before the General Division.

[16] Mere repetition of the arguments already made before the General Division is not sufficient to show that the appeal has a reasonable chance of success on one of the aforementioned grounds of appeal.

[17] An appeal to the Appeal Division is not a hearing on the merits of the Applicant's application for the Guaranteed Income Supplement.

[18] The issue before the General Division was whether, based on subsection 14(5) of the OAS Act, the Applicant's reporting of income for 2012 had been filed within the prescribed timelines.

[19] The following facts are not in dispute:

- a) On March 24, 2014, the Applicant's spouse submitted an application for the Guaranteed Income Supplement for 2012 (see GD2-14).
- b) In July 2012, the Applicant completed a reporting of income for 2012 and the Respondent received it on July 14, 2014 (see GD2-10 and 11).

[20] In its decision, the General Division member notes his review of the evidentiary record. Specifically, he noted the following at paragraph 7:

- a) The Applicant advised the Respondent on March 24, 2014, that she had retired on June 11, 2011.
- b) A reporting of income for 2012 was sent (by the Respondent).
- c) The Applicant had completed and signed the statement on July 9, 2014.
- d) The Respondent had received the statement on July 14, 2014.

[21] Based on subsection 14(5) of the OAS Act, the reporting of income for 2012 was due "not later than the end of the payment period that is immediately after the current payment period." In this case, it was therefore due on June 30, 2014.

[22] For these reasons, the General Division found that the Applicant had filed her statement late and that the Respondent was not obligated to consider her application.

[23] With respect to the errors of fact alleged by the Applicant, I note the following:

- a) The General Division examined the documents relevant to the file.
- b) The General Division references the reporting of income.
- c) The General Division concluded that the statement had been submitted late and relied on the reporting of income and not on the Applicant's spouse's application for the Guaranteed Income Supplement.

[24] It was not an error on the part of the General Division to conclude that the statement had been submitted late, on July 14, 2014.

[25] I find that the General Division did not base 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.

[26] The General Division decision refers to sections of the OAS Act. The General Division applied the law to the Applicant's situation. The decision does not contain an error in law.

[27] For these reasons, the appeal has no reasonable chance of success.

## **CONCLUSION**

[28] Leave to appeal is refused.

Shu-Tai Cheng  
Member, Appeal Division