



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. F. v. Minister of Employment and Social Development*, 2017 SSTADIS 429

Tribunal File Number: AD-16-914

BETWEEN:

E. F.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: August 23, 2017

REASONS AND DECISION

INTRODUCTION

[1] On March 21, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Applicant was not entitled to the OAS pension and GIS benefits pursuant to the *Old Age Security Act* (OAS Act) between July 2011 and December 2011.

[2] The Applicant filed a letter that was treated as an incomplete application for leave to appeal (Application) with the Tribunal's Appeal Division on July 4, 2016.

[3] The Tribunal sent a letter to the Applicant on July 14, 2016, acknowledging receipt of an incomplete application and advising him of the information needed to complete the application. The Applicant was given until August 15, 2016, to file the missing information.

[4] The Applicant provided further information on August 8, 2016.

[5] The Tribunal asked the Respondent for submissions on whether leave to appeal should be granted or refused, specifically as it related to:

The Applicant has asserted that he should receive benefits under the reciprocal social security agreement with Poland. The Respondent's letter of March 22, 2012 noted that since the Applicant may have eligibility for a benefit under the reciprocal social security agreement with Poland, the Applicant's file "has been sent to International Benefits and Foreign Affairs for review". The Tribunal (General Division member) previously requested that the Respondent provide written submissions regarding the position or outcome of this review, but the Respondent did not reply to these requests.

The Appeal Division member is now requesting written submissions from the Respondent on this issue, as it may be relevant to the Application.

[6] The Respondent provided its submissions on August 18, 2017, and "takes the position that leave to appeal the General Division decision should be granted based on an error of law, specifically that the General Division failed to apply the application of the Social Security Agreement between Canada and Poland." However, as it relates to the GIS benefit, the Respondent has submitted that the General Division's error does not affect the Applicant's

eligibility; because he has been residing out of Canada, he is not eligible for GIS benefits since December 2010.

ISSUES

[7] In order to succeed on this Application, the appeal must have a reasonable chance of success.

THE LAW

[8] Pursuant to subsections 57(1) and (2) of the *Department of Employment and Social Development Act* (DESD Act), an application for leave to appeal must be made to the Appeal Division within 90 days after the day on which the decision appealed from was communicated to the appellant. Moreover, “The Appeal Division may allow further time within which an application for leave is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant.”

[9] According to subsections 56(1) and 58(3) of the 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.”

[10] 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.”

[11] Subsection 58(1) of the DESD Act states that 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.

SUBMISSIONS

[12] The Applicant and the Respondent submit that leave to appeal should be granted, as it relates to the Applicant's eligibility for an OAS pension even during his absence from Canada under the bilateral agreement between Canada and Poland.

[13] The Application does not distinguish between the issues of OAS pension and GIS benefits. The Respondent submits that its initial decision on GIS benefits does not change, regardless of the bilateral agreement between Canada and Poland.

ANALYSIS

[14] The Applicant first applied for an OAS pension in December 2000 and for the GIS in May 2001. The Respondent approved these applications and the Applicant received these benefits. In January 2012, the Respondent notified the Applicant that, given that he had been absent from Canada since December 2010, he was not entitled to the OAS/GIS benefits that had been paid to him for the period of July 2011 to December 2011, and that this had resulted in an overpayment of \$7,496.28. The Applicant requested a reconsideration of this decision, and the Respondent issued its reconsideration decision on March 22, 2012, maintaining its initial decision.

[15] The Applicant appealed that decision to the Office of the Commissioner of Review Tribunals and, in April 2013, this appeal was transferred to the Tribunal's General Division.

[16] The General Division proceeded on the basis of the documents and submissions filed.

[17] The issue before the General Division was whether the Applicant had been entitled to the OAS/GIS benefits under the OAS Act between July 2011 and December 2011 given that he left Canada in December 2010.

[18] The General Division concluded that the Applicant was not entitled to the benefits at issue and noted that "[t]here is no information on file on the Appellant's eligibility to continue to receive benefits under the reciprocal social security agreement with Poland."

[19] The Applicant argues that, because the General Division neglected to consider the Applicant's eligibility for benefits under a reciprocal social security agreement with Poland, it failed to observe a principle of natural justice and did not exercise its jurisdiction.

[20] I note that there is the *Agreement on Social Security between Canada and the Republic of Poland*, which came into force on October 1, 2009.

[21] In its submissions, the Respondent has confirmed that:

- a) there is a reciprocal agreement between Canada and Poland; and
- b) "Polish authorities have confirmed that the Applicant has sufficient periods of coverage in Poland to meet the eligibility requirements to allow him to continue to receive payments on an OAS pension even during his absence from Canada."

[22] Therefore, it appears that the General Division erred in law in failing to apply the reciprocal agreement with Poland.

[23] The Respondent argues that leave to appeal should be granted only as it relates to the OAS pension and not as it relates to the GIS benefit.

[24] The Federal Court of Appeal in *Mette v. Canada (Attorney General)*, 2016 FCA 276, indicated that it is unnecessary for the Appeal Division to address all the grounds of appeal that an applicant has raised. In response to the Respondent's arguments that the Appeal Division was required to refuse leave to appeal on any ground it found to be without merit, Dawson J.A. stated that subsection 58(2) of the DESD Act "does not require that individual grounds of appeal be dismissed [...] individual grounds may be so inter-related that it is impracticable to parse the grounds so that an arguable ground of appeal may suffice to justify granting leave." This application is one of the situations described in *Mette*.

[25] Because the issue of OAS pension eligibility may be related to the issue of the GIS benefit, I will not parse the grounds of appeal any further at this stage of the proceedings.

[26] The appeal has a reasonable chance of success under paragraph 58(1)(b) of the DESD Act.

CONCLUSION

[27] The Application is granted under paragraph 58(1)(*b*) of the DESD Act.

[28] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Shu-Tai Cheng
Member, Appeal Division