



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. F. v. Minister of Employment and Social Development*, 2017 SSTADIS 542

Tribunal File Number: AD-16-914

BETWEEN:

E. F.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: October 23, 2017

REASONS AND DECISION

DECISION

[1] The appeal is allowed and the matter is returned to the General Division for reconsideration in accordance with the reasons and the directions in this decision.

OVERVIEW

[2] The Appellant, Mr. E. F., seeks reinstatement of his Old Age Security (OAS) pension and Guaranteed Income Security (GIS) benefits. He had been receiving a partial OAS pension and GIS benefits, but the Respondent notified him that since he had been absent from Canada, he was not entitled to the benefits that were paid to him for July to December 2011.

[3] The Appellant relies on a reciprocal social security agreement with Poland (Canada-Poland Agreement) and submits that he is entitled to continue receiving his pension and benefits under that agreement. The General Division had no information on the Appellant's eligibility to continue receiving benefits under the Canada-Poland Agreement and dismissed the appeal.

[4] The Tribunal's Appeal Division granted leave to appeal on the basis that the appeal had a reasonable chance of success because the General Division failed to apply the Canada-Poland Agreement. The Respondent concedes that the General Division erred in law and submits that the matter should be returned to the General Division for a *de novo* hearing.

ISSUE

[5] Does the Canada-Poland Agreement apply to the Appellant's situation?

[6] If it does, should the Appeal Division refer the matter back to the General Division for reconsideration, or is the Appeal Division able to render the decision that the General Division should have rendered?

ANALYSIS

[7] Because the General Division may have based its decision on an error of law by failing to apply the Canada-Poland Agreement, the Appeal Division granted leave to appeal.

[8] The Respondent concedes that the Canada-Poland Agreement provides the Appellant with “the requisite years of eligibility” so that he can continue to receive his OAS pension despite his absence from Canada. Therefore, I find that the Canada-Poland Agreement applies to the Appellant’s situation.

[9] However, new evidence will need to be presented on the Appellant’s years of eligibility under the Canada-Poland Agreement. This step is necessary to determine the impact on the Appellant’s pension and benefits, as well as on the overpayment that the Respondent was asserting.

[10] It is the General Division’s role (and not the Appeal Division’s) to find the facts and weigh the evidence. As such, this matter will be referred back to the General Division for reconsideration. A *de novo* hearing before a different General Division member is appropriate.

CONCLUSION

[11] The appeal is allowed. The matter is referred back to the General Division for reconsideration.

Shu-Tai Cheng
Member, Appeal Division