



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. P. v. Minister of Employment and Social Development*, 2017 SSTADIS 615

Tribunal File Number: AD-17-3

BETWEEN:

P. P.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: November 7, 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, P. P., seeks an increase to his Old Age Security (OAS) pension. The General Division of the Social Security Tribunal of Canada (Tribunal) found that he was not eligible for further years of eligibility and, therefore, that he did not qualify for an increase of benefits.

[3] The Appellant appeals that decision based on an alleged breach of natural justice and serious errors in the fact finding. The Tribunal's Appeal Division granted leave to appeal on the basis that the appeal had a reasonable chance of success, because the Appellant did not have an opportunity to participate fully in the hearing of his appeal.

[4] The Respondent submits that the appeal should be granted and that the matter should be referred back to the General Division.

ISSUES

[5] Did the General Division fail to observe a principle of natural justice?

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

ANALYSIS

[7] Because the Appellant did not participate in the General Division hearing and the right to be heard is a fundamental one, the Appeal Division granted leave to appeal.

[8] The Appeal Division has decided to render a decision on the record, because no oral hearing is needed. There are no gaps in the file and there is no need for clarification, and this manner of proceeding respects the requirements under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness and natural justice permit.

[9] The Respondent submits that the appeal should be allowed, as the General Division failed to observe a principle of natural justice when the Appellant was not given an opportunity to participate fully in his appeal.

[10] I note that the Appellant did not participate in the General Division hearing, despite having received the Notice of Hearing and having confirmed that he would be attending. He submits that he attempted three times to connect to the telephone conference hearing and that the connection failed each time. The hearing was held in his absence. The Appellant contacted the Tribunal to report that he had missed his hearing, but the General Division had issued its decision.

[11] Having reviewed the record and the parties' submissions, I allow this appeal because the General Division failed to observe a principle of natural justice, namely the right to be heard.

[12] It is the General Division's role (and not the Appeal Division's role) 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

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

Shu-Tai Cheng
Member, Appeal Division