



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. L. v. Minister of Employment and Social Development*, 2017 SSTADIS 646

Tribunal File Number: AD-17-82

BETWEEN:

M. L.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision by: Shu-Tai Cheng

Date of Decision: November 15, 2017

REASONS AND DECISION

DECISION

[1] The appeal of the decision of the General Division of the Social Security Tribunal of Canada (Tribunal), dated December 9, 2016, is dismissed.

OVERVIEW

[2] The Appellant, M. L., is asking the Tribunal to correct the amount of his Old Age Security (OAS) benefits. The Appellant submits that he has been a resident of Canada for more than 44 years and that he is entitled to a full OAS pension, and not a partial pension. He also receives a Guaranteed Income Supplement (GIS).

[3] The Respondent, the Minister of Employment and Social Development, opposes this request because the appeal concerns a GIS overpayment and not the OAS pension.

[4] The Appellant appealed the Respondent's decision regarding his GIS even though the Respondent returned the initial overpayment. The issue regarding the Appellant's income outside Canada was decided by the Tax Court of Canada. Therefore, the General Division had to determine only whether it had jurisdiction relating to the matter of the Appellant's Canadian residence and its impact on his OAS pension. The General Division determined that it did not have jurisdiction relating to the Appellant's OAS pension and it summarily dismissed the appeal.

[5] The Appellant submits that the General Division ignored the evidence concerning his residence in Canada.

[6] The appeal must be dismissed because the Respondent's decision that is being appealed concerns the Appellant's GIS. The Tribunal does not have the jurisdiction to decide on the Appellant's OAS pension.

ISSUE

[7] Did the General Division ignore relevant evidence on the Tribunal's jurisdiction regarding the Appellant's OAS pension?

ANALYSIS

[8] The General Division is required to dismiss an appeal summarily if it is satisfied that the appeal would have no reasonable chance of success.¹ Following a summary dismissal by the General Division, an appeal may be brought to the Appeal Division without seeking leave to appeal.²

[9] The only grounds of appeal are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.³

[10] The first issue to consider relates to the Tribunal's jurisdiction regarding the Appellant's OAS pension. If the Tribunal does not have jurisdiction, the appeal will be dismissed. Only where the Tribunal has this jurisdiction can it proceed to analyze the relevant legislation and facts concerning the Appellant's residence.

Did the General Division ignore relevant evidence on the Tribunal's jurisdiction regarding the Appellant's OAS pension?

[11] According to the Appellant, the General Division made serious errors in its conclusion that it did not have jurisdiction over the Appellant's OAS pension. He did not elaborate on this argument, but he submits that his appeal was taken too lightly. He wishes to speak to someone in person to explain his situation.

[12] I find, however, on reading the General Division's decision and the appeal file, that it took the evidence on file into consideration and did not ignore the evidence or applicable legislation to the Tribunal's jurisdiction. I am therefore of the opinion that it is unnecessary to

¹ *Department of Employment and Social Development Act* (DESDA), at subsection 53(1).

² DESDA, at subsection 56(2).

³ DESDA, at section 58.

hear the Appellant because this is a matter of jurisdiction and the Tribunal must proceed as informally and as quickly as circumstances, fairness and natural justice permit.⁴

Reconsideration decision

[13] The fundamental issue is the initial source of this appeal. The appeal stems from a decision of the Respondent according to which the Appellant received an overpayment of his GIS. That is the decision that the Appellant disputes, and that decision determines the Tribunal's jurisdiction in this appeal.

[14] The Appellant's ground of appeal following the Respondent's 2011 decision⁵ was that the income used for calculating the GIS was erroneous.⁶ The Appellant denied having income earned abroad. The appeal to the General Division relates to this decision of the Respondent and the issue of income earned abroad.

General Division decision

[15] The General Division asked the Appellant questions in writing to better understand his ground of appeal. The Appellant specified that he wished to resolve his OAS pension; he has been requesting that his OAS pension be corrected since 2010. Furthermore, the Appellant submits that he had been advised to submit an application for the GIS, which created the issue that followed.

[16] The issues before the General Division were the following: a) Does the Respondent need to consider income earned abroad when calculating the GIS? b) Did the Respondent miscalculate the years that the Appellant spent in Canada for the purposes of the OAS pension?

[17] The first question was decided by the Tax Court of Canada, which ruled in favour of the Respondent. Therefore, the Appellant no longer disputes that issue.

⁴ *Social Security Tribunal Regulations*, at subsection 3(1).

⁵ Initial decision and reconsideration decision: GT1-29 and 80, and GT1-16.

⁶ Appellant's reconsideration request and letters in support of the Appellant: GT1-78, 20, 23 and 29.

[18] Regarding the second issue, the General Division had to determine whether it had jurisdiction relating to the Appellant's OAS pension. It found that it did not have jurisdiction and that it could not assume jurisdiction for humanitarian or fairness reasons.

[19] I find that the General Division was right. The reconsideration decision related to the Appellant's GIS. The Appellant did not dispute the decision approving his OAS pension in 1998. There is no evidence on file of a previous decision of the Respondent relating to the OAS pension that was paid.

[20] A reconsideration of the OAS pension and an appeal of this decision to the General Division are needed for the Tribunal to have jurisdiction to decide the issue of the OAS pension. There is no reconsideration decision on file of the appeal relating to the Appellant's Canadian residence and its impact on his OAS pension.

[21] In this situation, the General Division decided on the record to summarily dismiss the appeal.

Legal test for summary dismissal

[22] I note that the determination to summarily dismiss an appeal is a threshold test. It is not appropriate to consider the case on the merits in the parties' absence and then find that the appeal cannot succeed.⁷ The question to be asked for summary dismissal is as follows: Is it plain and obvious on the record that the appeal is clearly bound to fail?

[23] For further clarity, the question to be asked is not whether the appeal must be dismissed after considering the facts, the case law and the parties' arguments. Rather, it must be determined whether the appeal is destined to fail regardless of the evidence or arguments that might be submitted at a hearing.

[24] I find that this appeal is bound to fail, regardless of the evidence or arguments that could be presented at a hearing. The Tribunal does not have jurisdiction regarding the Appellant's Canadian residence and its impact on his OAS pension.

⁷ *Lessard-Gauvin c. Canada (Attorney General)*, 2013 FCA 147; and *Breslaw v. Canada (Attorney General)*, 2004 FCA 264.

[25] Although the Appellant is not satisfied with the General Division's decision and its conclusion that it simply does not have the authority to address this issue, the General Division did not ignore relevant evidence.

[26] Moreover, for the above-mentioned reasons, I also find that the General Division did not err in law or refuse to exercise its jurisdiction.

CONCLUSION

[27] The appeal is dismissed.

Shu-Tai Cheng
Member, Appeal Division