



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. F. v. Minister of Employment and Social Development*, 2018 SST 246

Tribunal File Number: AD-17-971

BETWEEN:

S. F.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: March 16, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, S. F., is seeking to exclude her Italian social allowance from her Canadian income for the Guaranteed Income Supplement (GIS) calculation under the *Old Age Security Act*.

[3] In July 2013, S. F. submitted a GIS application for the payment period from July 2013, to June 2014. The Respondent, the Minister of Employment and Social Development (Minister), approved the application and, in calculating the amount of S. F.'s benefit, determined that monies received from the Italian government should be included in her income for 2012. The Minister upheld this decision on reconsideration, and S. F. then filed an appeal with the General Division of the Social Security Tribunal (Tribunal).

[4] The first member of the General Division to consider S. F.'s appeal dismissed it because he found the appeal was filed late. In August 2016, my colleague on the Appeal Division found that, in declining to extend the time to appeal, the General Division effectively deprived S. F. of her right of appeal to the Tax Court of Canada (TCC).

[5] The matter was referred to the TCC, which decided, in a judgment dated April 24, 2017, that S. F.'s Italian social assistance payments for the 2012 taxation year were \$8,623, and the total combined income for her and her spouse was therefore reduced to \$15,950 for her GIS determination.

[6] S. F. continued to pursue her appeal before the General Division, claiming that there remained unresolved issues, among them whether her Italian social assistance payments should be included in her Canadian income and whether she had completed her GIS application in accordance with her income tax returns.

[7] A second member of the General Division considered S. F.'s concerns and, in a decision dated September 25, 2017, summarily dismissed her appeal, finding that the TCC had resolved all outstanding issues. It also determined that none of her other grounds of appeal had a reasonable chance of success.

[8] On December 19, 2017, S. F. appealed the summary dismissal with the Tribunal's Appeal Division. Her reasons for appeal can be summarized as follows:

- She agrees with the TCC's ruling but alleges that the Minister and the General Division misinterpreted it. Although the TCC specified amounts as income "for purposes of determining the Appellant's GIS eligibility" in its decision, she denies that required her Italian social assistance to be included in the income considered for GIS calculation.
- She alleges that the General Division erroneously considered her GIS eligibility from July 2013, to June 2014. In fact, her appeal applied to the period from April 2012 to June 2014.
- She alleges that the General Division disregarded her submission, dated July 18, 2017, in response to its notice of intention to summarily dismiss. The General Division's decision, specifically paragraph 17, largely ignored the content of her last submission and was based on the information already on file.

[9] I have decided that an oral hearing is unnecessary and that the appeal will proceed on the basis of the documentary record for the following reasons:

- There are no gaps in the file, and there is no need for clarification.
- This form of hearing respects the requirement of the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness, and natural justice permit.

ISSUES

[10] The issues before me are as follows:

Issue 1: Did the General Division err in rendering its decision?

Issue 2: Did the General Division apply the correct test for a summary dismissal?

ANALYSIS

[11] No leave to appeal is necessary in the case of an appeal brought under subsection 53(3) of the *Department of Employment and Social Development Act* (DESDA), as there is an appeal as of right when dealing with a summary dismissal from the General Division.

[12] The only grounds of appeal to the Appeal Division are that the General Division erred in law, failed to observe a principle of natural justice, or 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.¹ The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration, or vary the General Division's decision in whole or in part.²

Issue 1: Did the General Division err in rendering its decision?

[13] The General Division's disposition of this appeal depended on whether there were any outstanding issues of merit after the TCC issued its ruling.

Misinterpretation of the TCC decision

[14] The TCC made specific determinations of S. F.'s Italian social allowance and family income when assessing her GIS entitlement. Nevertheless, S. F. argues that an apparent discrepancy between the definitions of "income" for calculating GIS and income tax permitted her to exclude her foreign social assistance payments from the former.

¹ Subsection 58(1) of the DESDA.

² Subsection 59(1) of the DESDA.

[15] S. F. made a similar argument before the General Division, which it duly considered. Having reviewed S. F.'s submissions, the General Division determined that the TCC had definitively resolved the issue of what constituted her income, for GIS purposes, for the payment period of 2013–14. The General Division concluded—correctly, in my view—that the matter was thus beyond its jurisdiction.

[16] The Appeal Division is not a forum that ordinarily permits claimants to reargue their cases on their merits. My authority as an Appeal Division member permits me to determine only whether any of an applicant's reasons for appealing fall within the specified grounds under subsection 58(1) of the DESDA and whether any of them have a reasonable chance of success. In this case, I see no error that would warrant intervention.

Period under consideration

[17] S. F. alleges that the General Division erred in limiting the scope of its inquiry to the period of July 2013 to June 2014.

[18] Again, I fail to see an argument. S. F.'s original appeal was founded on the Minister's assessment of her 2012 income for the purpose of calculating her GIS for the 2013–14 payment period. This, in turn, originated in S. F.'s GIS application, which she submitted on July 9, 2013. Any payment periods before or after 2013–14 were therefore beyond the scope of the appeal.

Failure to consider material

[19] S. F. alleges that the General Division disregarded her July 2017 written brief, but I see no indication this is so. A decision-maker is presumed to have considered all the material before it and need not discuss each and every element of a party's submissions.³ That said, I see no indication that General Division ignored, or gave inadequate consideration to, any of S. F.'s significant arguments.

[20] Paragraph 17 of the General Division's decision, which S. F. criticizes as incomplete, strikes me as a fair summary of the concerns that she has raised at various stages of this

³ *Simpson v. Canada (Attorney General)*, 2012 FCA 82.

proceeding over the years. Moreover, the July 2017, brief added little of substance and essentially mirrored the content of S. F.'s prior submissions.

Issue 2: Did the General Division apply the correct test for a summary dismissal?

[21] I am satisfied that the General Division used the appropriate mechanism to dispose of S. F.'s appeal. In paragraph 2 of its decision, the General Division invoked subsection 53(1) of the DESDA, correctly stating the provision that permits it to summarily dismiss an appeal that has no reasonable chance of success. However, I acknowledge that it is insufficient to simply cite legislation without properly applying it to the facts.

[22] The decision to summarily dismiss an appeal relies on 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. In *Fancy v. Canada*,⁴ the Federal Court of Appeal determined that a reasonable chance of success is akin to an arguable case at law. The Court also considered the question of summary dismissal in the context of its own legislative framework and determined that the threshold for summary dismissal is high.⁵ It must be determined whether it is plain and obvious on the face of the record that the appeal is bound to fail. The question is not whether the appeal must be dismissed after considering the facts, the case law, and the parties' arguments. Rather, the question is whether the appeal is destined to fail regardless of the evidence or arguments that might be submitted at a hearing.

[23] It is clear from the record that the one issue of substance in this proceeding was, from the beginning, the quantum of income to be used to calculate S. F.'s GIS for the 2013–14 payment period. The TCC conclusively answered this question, leaving little of consequence for the General Division to resolve.

[24] In the absence of any recourse to equity, the General Division was within its jurisdiction to summarily dismiss the appeal. In my view, it was plain and obvious on the face of the record that S. F.'s arguments were bound to fail.

⁴ *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

⁵ *Lessard-Gauvin v. Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; and *Breslaw v. Canada (Attorney General)*, 2004 FCA 264.

CONCLUSION

[25] Having reviewed S. F.'s submissions against the record, I am satisfied that the General Division did not err in dismissing her appeal and appropriately used the summary dismissal process to do so.

[26] The appeal is dismissed.



Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVE:	S. F., self-represented