



Tribunal de la sécurité
sociale du Canada

Social Security
Tribunal of Canada

[TRANSLATION]

Citation: *J. N. v. Minister of Employment and Social Development*, 2018 SST 287

Tribunal File Number: AD-17-551

BETWEEN:

J. N.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: March 28, 2018

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant claims to be eligible for an Old Age Security (OAS) pension. However, the Respondent, the Minister of Employment and Social Development, maintains that it was required to suspend the Appellant's OAS pension in light of his incarceration.

[3] The Appellant appealed the Minister's determination to the Tribunal's General Division. However, the appeal was dismissed in July 2017, following a teleconference hearing in which the Appellant did not participate. The Appellant then filed an application for leave to appeal to the Appeal Division, and I granted leave for the reasons set out in my decision dated January 30, 2018.

[4] Since this decision, the Minister has acknowledged that the appeal should be allowed pursuant to s. 58(1)(a) of the *Department of Employment and Social Development Act* (DESD Act), since the General Division failed to observe a principle of natural justice (AD3). In a letter dated March 21, 2018, the Appellant responded to the Minister's letter recommending that the appeal be allowed (AD4). In a letter dated March 22, 2018, the Appellant revised his letter from the previous day (AD5).

ANALYSIS

[5] In this case, the General Division decided to hear the appeal by teleconference for the following reasons (among others):

- a) The issues under appeal are complex;
- b) There are gaps in the information on file and/or a need for clarification.

[6] This decision was made despite the fact that the Appellant had asked that the appeal proceed in writing because of his incarceration. In this regard, there are notes in several documents indicating that the Appellant does not have a telephone, fax machine, or Internet access, and that everything must be done only in writing.¹

[7] The General Division proceeded without the Appellant and rendered its decision based on the documents filed by the parties.

[8] I agree that by proceeding in this manner, the General Division breached a principle of natural justice. More specifically, the General Division had concluded that the file was missing information or that clarification was necessary. However, it decided to proceed with the appeal by conducting a type of hearing in which the Appellant could not participate. Therefore, I have the right to intervene under s. 58(1)(a) of the DESD Act. For the reasons set out by the Minister, I also agree with the remedy it has suggested: the matter must be returned to the General Division for reconsideration (AD3).

Appellant's March 22, 2018, Letter

[9] The Appellant's March 22, 2018, letter is a little puzzling (AD5). In this letter, the Appellant submits that the Minister is asking that the matter be referred back to the General Division in order to suspend his right to a written proceeding. I cannot accept the Appellant's argument. On the contrary, the General Division is in a position to examine all the circumstances and hear the appeal in writing if necessary. In this case, it is clear that the circumstances point in that direction.

[10] The Appellant also asks the Tribunal to order the Minister to submit all the documents he requested in Appendix 2 of his notice of appeal, as well as the additional documents listed in his recent letter (GD1-15 and AD5, at paragraphs 10 to 16). As the Appellant was already informed (GD6), [translation] "the Tribunal does not have the authority to require the Respondent (the Minister) to submit documents." However, the General Division can reassess this list and invite the Minister to provide these documents if it deems them useful to determining the issues.

¹ For example, GD5-6, GD7-4, and GD13-7.

[11] I feel that I have addressed the concerns raised by the Appellant in his March 22, 2018, letter. However, I admit that I had trouble understanding the request to rescind my previous decision (in paragraph 8 of his letter). In any case, this decision is final, and rule 369 of the *Federal Courts Rules* does not apply to the proceeding before the Tribunal.

CONCLUSION

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

[13] To be clear, I am not stating that the Appellant's OAS pension must be re-established. The General Division may dismiss the appeal a second time, but it must do so while respecting the principles of natural justice.

Jude Samson
Member, Appeal Division

METHOD OF PROCEEDING:	On the written record
APPEARANCES:	J. N., Appellant Nathalie Pruneau (paralegal), Representative for the Respondent