



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. M. v. Minister of Employment and Social Development*, 2018 SST 297

Tribunal File Number: AD-18-57

BETWEEN:

S. M.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: March 28, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, S. M., is seeking to exclude a lump sum payment from his income for the purpose of calculating the Guaranteed Income Supplement (GIS).

[3] In June 2013, S. M. submitted an application for the GIS under the *Old Age Security Act* (OASA). The Respondent, the Minister of Employment and Social Development (Minister), approved the application. S. M. later disclosed that he had withdrawn \$19,279 from his registered retirement savings plan (RRSP) in 2013 and asked that it be excluded from his income when calculating the amount of his GIS for the payment year July 1, 2014 to June 30, 2015. The Minister refused to do so, characterizing the lump sum as investment income, rather than pension income. S. M. then filed an appeal with the General Division of the Social Security Tribunal.

[4] The General Division referred the matter to the Tax Court of Canada (TCC). In a judgment dated October 24, 2017, the TCC dismissed S. M.'s appeal, finding that the Minister's determination of his income for 2013, including the RRSP payment, was correct.

[5] In a decision dated January 2, 2018, the General Division summarily dismissed S. M.'s appeal, finding that, since the TCC had resolved his only ground of appeal, there were no other issues left to be addressed.

[6] On January 22, 2018, S. M. appealed the summary dismissal to the Tribunal's Appeal Division. His reasons for appeal can be summarized as follows:

- In paragraph 5, the General Division stated that the inclusion of the lump sum payment led to a denial of his GIS; in fact, it was not denied but reduced.
- The TCC agreed that the lump sum was part of his pension. It was included in the GIS calculation only because it was considered to be from an RRSP. In reality, it

was from a registered retirement investment fund (RRIF) and therefore should have been excluded from the GIS calculation.

- He completely disagrees with the General Division's decision. The government's actions have been unfair and caused him severe financial distress.

[7] 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

[8] 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

[9] 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.

[10] 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

¹ Subsection 58(1) of the DESDA.

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?

[11] The General Division's disposition of this appeal depended on whether there were any outstanding issues of merit after the TCC issued its ruling. In my view, there were none.

Effect of lump sum payment on GIS

[12] S. M. alleges that the General Division erred when it wrote that the inclusion of the \$19,279 led to the denial, rather than the reduction, of his GIS.

[13] I see little merit in this argument. Under subsection 58(1) of the DESDA, a factual error by itself is insufficient to overturn a decision; the General Division must have also *based* its decision on that error, which itself must have been "made in a perverse or capricious manner or without regard for the material before it." In other words, the error must be material *and* egregious. In this case, S. M.'s appeal has never turned on whether his benefit was reduced or eliminated.

Misinterpretation of the TCC decision

[14] S. M. seems to suggest that the General Division misinterpreted the TCC's judgment. I must disagree.

[15] Under subsection 28(2) of the OASA, the TCC, and not the Tribunal, has jurisdiction over issues relating to the source and calculation of income used to determine eligibility for benefits. In this case, the TCC made a specific determination of S. M.'s income to assess his GIS. In doing so, it considered the same arguments—which depend on drawing a distinction between an RRSP and RRIF—that were the grounds of S. M.'s appeal to the General Division.

[16] Having reviewed S. M.'s submissions, the General Division determined that the TCC had definitively resolved the issue of what constituted his income for the 2014–15 GIS payment

² Subsection 59(1) of the DESDA.

period. The General Division concluded—correctly, in my view—that the matter was thus beyond its jurisdiction.

[17] S. M. has now presented essentially the same arguments to the Appeal Division. This is not a forum that ordinarily rehears 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.

Equity

[18] S. M. regards the General Division's decision as unjust, but I see no recourse available to him under the law. The TCC and the General Division were bound to follow the provisions of the OASA and associated legislation, and so am I. The TCC has ruled on S. M.'s income, and the General Division has rightly determined that there are no other arguable issues.

[19] Under section 58 of the DESDA, I lack the discretionary authority to simply order what I may think is fair. This reality is reflected in cases such as *Canada v. Tucker*,³ which held that an administrative tribunal is not a court but a statutory decision-maker and therefore not empowered to provide any form of equitable relief.

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

[20] I am satisfied that the General Division used the appropriate mechanism to dispose of S. M.'s appeal. In paragraph 3 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.

[21] 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

³ *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278.

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

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.

[22] 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. M.'s GIS for the 2014–15 payment period. The TCC conclusively answered this question, leaving nothing of consequence for the General Division to resolve.

[23] 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. M.'s arguments were bound to fail.

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

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

[25] The appeal is dismissed.



Member, Appeal Division

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