



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *The Estate of J. B. v. Minister of Employment and Social Development*, 2018 SST 564

Tribunal File Number: AD-17-392

BETWEEN:

The Estate of J. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: May 24, 2018

REASONS AND DECISION

DECISION

[1] The appeal of the decision rendered by the General Division of the Social Security Tribunal of Canada (Tribunal) on March 23, 2017, is dismissed.

OVERVIEW

[2] The Appellant, the estate of J. B., is the subject of a Guaranteed Income Supplement (GIS) claim. This claim was made for the period during which J. B. was receiving a GIS as a single person while living in a common-law relationship with M. L. The Appellant maintains that the Respondent, the Minister of Employment and Social Development (Minister), did not take into account information about J. B.'s marital status that was provided on her tax returns and that this administrative error caused prejudice to an elderly lady.

[3] The Minister made adjustments to J. B.'s GIS after her and M. L.'s separation in 2013. The Minister informed J. B. of a claim in 2014, and after a review of the file in 2015, a new GIS claim for \$14,457.27 was imposed.

[4] J. B. appealed the Minister's decision to the Tribunal on the basis of the Minister's administrative error about her marital status. After J. B.'s death, her estate (Appellant) took over the appeal.

[5] The General Division found that the Tribunal does not have the jurisdiction to decide the only issue: acknowledgement of an administrative error made by the Minister. As a result, the appeal was summarily dismissed.

[6] The Appellant submits that the Minister committed an administrative error that caused prejudice and that there may be remedies in the statutory provisions to correct this prejudice.

[7] The appeal must be dismissed because the Minister's decisions about alleged administrative errors cannot be appealed to the Tribunal.

ISSUE

[8] Does the Tribunal's General Division or Appeal Division have the necessary jurisdiction to decide an issue based on an alleged administrative error made by the Minister?

ANALYSIS

[9] 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, no leave is needed to appeal to the Appeal Division.²

[10] 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; erred in law in making its decision, whether or not the error appears on the face of the record; 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.³

Does the Tribunal's General Division or Appeal Division have the jurisdiction necessary to decide an issue based on an alleged administrative error made by the minister?

[11] Neither the Tribunal's General Division nor the Appeal Division has the jurisdiction necessary to decide this issue.

[12] In the Appellant's view, the Minister failed to fulfill its obligations by not checking J. B.'s GIS entitlement against her federal tax returns. The estate maintains that there must be a remedy for such an error, which caused prejudice.

[13] However, upon reading the General Division's decision and the appeal docket, I note that the General Division considered the evidence in the file and that it did not disregard the evidence. Furthermore, it correctly interpreted the *Old Age Security Act* (OAS Act) concerning an administrative error committed by the Minister and applied the case law related to the situation.

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

² DESDA at s. 56(2)

³ DESDA at s. 58

The General Division's Decision

[14] The General Division informed the Appellant that it was considering summarily dismissing the appeal and referred to *Tucker*⁴ on the impossibility of appealing a decision made by the Minister concerning an administrative error. The Appellant replied to this notice and tried to establish a difference between this case and *Tucker*.

[15] The issues before the General Division were as follows:

- a) Was J. B. in a common-law relationship from July 1, 2008, to June 2013?
- b) Did she receive GIS amounts for a single person instead of those for a person in a common-law relationship (that is, an overpayment)?
- c) If the overpayment amount is the consequence of an administrative error committed by the Minister, does the Tribunal have the necessary authority to decide an appeal of the Minister's decision to pursue the claimed overpayment?

[16] The Appellant does not contest questions a) and b). J. B. was in a common-law relationship during that period, and she received larger GIS amounts than she was entitled to. In other words, she was paid too much, but, the Appellant maintains that an administrative error by the Minister is the cause of it.

[17] The General Division found that [translation] "the Appellant's reason for appealing is based entirely on the allegation that an administrative error was committed." It also found that the Federal Court of Appeal has stated that the Minister's decisions about alleged administrative errors in the context of the OAS Act are not subject to requests for reconsideration. As a result, it is no longer possible to appeal such decisions to the Tribunal.

[18] I find that the General Division was right.

[19] Even though the Minister does not contest the fact that an administrative error seems to have been committed by the Minister, it maintains that the Minister's decision on this topic

⁴ *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278

cannot be appealed to the Tribunal. The Minister issued a letter in April 2016 explaining that alleging an administrative error as a reason for appeal can be done only as part of an application for judicial review to the Federal Court.⁵

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

Summary Dismissal: Legal Test

[21] I note that the determination of whether or not to summarily dismiss 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.⁶ 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?

[22] More specifically, the question 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 bound to fail regardless of the evidence or arguments that might be submitted at a hearing.

[23] I find that this appeal is bound to fail, regardless of the evidence or arguments that could be presented at a hearing. There was, quite simply, no convincing evidence or argument that could be presented. The appeal relies entirely on the allegation that an administrative error was committed by the Minister.

[24] The OAS Act provides a remedy for those affected by administrative errors made by the Minister, and the Minister is authorized to take the necessary remedial action.⁷ A Minister's decision on this point is not subject to the application process for a reconsideration,⁸ and such decisions cannot be appealed to the Tribunal.

[25] Although the Appellant is not satisfied with the General Division's decision and finding

⁵ GD4-11: Letter from Service Canada to the Appellant, dated April 19, 2005

⁶ *Lessard-Gauvin v. Canada (Attorney General)*, 2013 FCA 147; *Breslaw v. Canada (Attorney General)*, 2004 FCA 264

⁷ OAS Act, at para. 32

⁸ *Tucker, Supra*

that the Tribunal does not have the necessary authority, the General Division did not based its decision on an erroneous finding of fact and it did not overlook relevant evidence.

[26] In addition, for the above-mentioned reasons, I find that the General Division did not err in law in making its decision.

CONCLUSION

[27] The appeal is dismissed.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	A. D., for the Appellant
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