Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *G. K. v. Minister of Employment and Social Development*, 2018 SST 649

Tribunal File Number: AD-18-70

BETWEEN:

G. K.

Appellant

and

Minister of Employment and Social Development

Respondent

and

Y. K.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: June 4, 2018

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] In March 2010, the Appellant, G. K. [*sic*] received a letter from Service Canada notifying him that he might be eligible for an Old Age Security pension (OAS pension).[1] This letter was accompanied by information about the conditions for eligibility for the OAS pension and the application form, which the Appellant completed and submitted.

[3] The Appellant reported being a resident of Canada since July 6, 1993, so the Respondent, the Minister of Employment and Social Development (Minister), awarded him a partial OAS pension and Guaranteed Income Supplement (GIS) benefits for the entire period from April 2011 to February 2015.

[4] However, following an enquiry undertaken at the Appellant's request, the Minister found that the Appellant spent very little time in Canada, that he worked as a doctor in Haiti, and that his attachment to Haiti was much stronger than his attachment to Canada. The Minister therefore found that the Appellant had never established his residence in Canada and requested that the Appellant reimburse the entire sum that he had received from the OAS pension and the GIS.

[5] Without challenging the merits of the Minister's decision, the Appellant requested that the reimbursement request be cancelled, either for the reason that the Minister had invited him to apply for the OAS pension (which might be considered an administrative error) or for humanitarian reasons (because he cannot repay this sum on his income).[2] However, the Minister maintained its original decision. The Appellant then appealed the Minister's decision to the General Division of the Tribunal, but it summarily dismissed his appeal.

[6] I also find that the appeal should be dismissed.

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[1] GD4-5.
[2] GD2-7.

ISSUES

[7] Did the General Division commit:

a) an error of law by summarily dismissing the appeal;

b) an error of law or of fact by failing to assign enough weight to a letter dated November 3, 2014, from Citizenship and Immigration Canada?[3]

ANALYSIS

[8] To have a reasonable chance of success, the Appellant must establish that the General Division has committed at least one of the three errors (grounds of appeal) set out in s. 58(1) of the *Department of Employment and Social Development Act* (DESD Act). Generally speaking, did the General Division commit one of the following errors:

a) failing to observe a principle of natural justice or otherwise erring in jurisdiction;

b) erring in law; or

c) basing 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?

[9] Regarding the degree of attention with which the General Division decision must be reviewed, I have focused on the wording of the DESD Act.[4] As a result, I am convinced that any violation of a principle of natural justice or any error of law could justify my intervention. Where errors of fact are concerned, the General Division has a certain margin of error.

Issue 1: Did the General Division commit an error of law by summarily dismissing the appeal?

[10] The Minister's decision was communicated to the Appellant in a letter dated April 6, 2016: following a review of the case, the Minister found that the Appellant had never established

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[3] GD1-12.
[4] DESD Act, at s. 58(1); *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93; *Canada (Attorney General) v. Jean*, 2015 FCA 242.

his residence in Canada.[5] As a result, he had to repay the entire sum that he had received through the OAS pension and the GIS: a total of $47,717.48.

[11] The Appellant requested a review of this decision, saying that:[6]

a) the Minister had started the process regarding his pension application and had informed him that he could receive benefits without explaining all of the eligibility conditions;

b) he could not repay such a sum on his income, so the Minister should cancel its reimbursement request for humanitarian reasons.

[12] On January 10, 2017, the Minister maintained its initial decision because the Appellant had been only **present** in Canada and had never established his **residence** there. This is a crucial distinction under s. 21(1) of the *Old Age Security Regulations* (OAS Regulations).[7]

[13] The Appellant then sought leave to appeal the General Division decision. In his notice of appeal, the Appellant emphasized once more that it was thanks to a letter from the Minister that he became aware of the OAS pension and the GIS. As a result, he should not be held responsible for the unwarranted payment of these benefits.[8] Furthermore, he was unjustly penalized for the upheld initial decision because he did not have the financial resources to repay such a sum.

[14] However, in August 2017, the Minister requested that the appeal be summarily dismissed because it had no reasonable chance of success.[9] In the Minister's view, the Appellant was not challenging the merits of its decision, namely the conclusion that the Appellant had never established his residence in Canada. The Appellant was actually requesting only the reduction (or remission) of an established overpayment.

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[5] GD2-8.
[6] GD2-7.
[7] GD2-3.
[8] GD1-2.
[9] GD3.

[15] The following month, the General Division informed the Appellant that it intended to summarily dismiss his appeal and invited him to explain why his appeal had a reasonable chance of success.[10]

[16] In his reply to the General Division's letter, the Appellant emphasized the contradiction between the Minister's letters saying that he was eligible and then ineligible for the benefits that he had received. He submits that this contradiction should be considered an administrative error for which he is not accountable.

[17] The General Division issued its decision in this case on October 30, 2017. I have a few problems with the way this decision was expressed, but I agree with its conclusion. The Appellant had not contested the Minister's conclusion regarding his residence in Canada. As a result, the questions before the General Division dealt with knowing whether an administrative error had taken place and whether some or all of the overpayment should be remitted in light of the Appellant's financial situation.

[18] These questions fall outside the Tribunal's jurisdiction. The Tribunal has neither the authority to determine whether an administrative error had occurred nor the authority to review discretionary decisions that might be made as a result.[11]

[19] With regard to the principle of law that the Appellant has invoked to support his position—*donner et retenir ne vaut* ("What is once given, is given for good and all")—I would emphasize that the Minister can, at any time, investigate a person's eligibility for benefits and request repayment of an overpayment.[12]

[20] The General Division found that the appeal did not have a reasonable chance of success and summarily dismissed it. I am of the opinion that, in doing so, the General Division specified the correct legal criterion and did not commit an error in the application of this criterion.[13]

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[10] GD0.
[11] *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278.
[12] *Old Age Security Act*, s. 37; *Old Age Security Regulations*, s. 23.
[13] DESDA, s. 59(1).

Issue 2: Did the General Division commit an error of law or of fact by failing to assign enough weight to a letter from Citizenship and Immigration Canada?

[21] The General Division need not refer to every piece of evidence that it has in front of it. Rather, it is presumed to have reviewed all of the evidence.[14] However, the General Division may fall into error if it fails to assess evidence that is sufficiently relevant.[15]

[22] In this case, the Appellant's notice of appeal was accompanied by a letter dated November 3, 2014, from Citizenship and Immigration Canada. This letter, which addresses the Appellant's residence under the *Immigration and Refugee Protection Act*, reads as follows:

> [TRANSLATION]
> Following an analysis of all the facts and documents that you submitted to support your application, we have come to the conclusion that you have satisfied the residence requirement as described in subsection 28(2) of the *Immigration and Refugee Protection Act.* You will therefore retain your status of permanent resident, which was granted to you on July 6, 1993, in X.

[23] The Appellant argues that the General Division erred by failing to assign enough weight to this letter. In fact, the General Division decision does not refer to this evidence at all.

[24] Even though the Appellant now emphasizes the importance of this letter, he did not do so in his notice of appeal or in his reply to the General Division's letter informing him of its intention to summarily dismiss his appeal.[16] Furthermore, the relevance of this letter is not entirely obvious, in light of the following facts:

a) the letter deals with residency requirements in the context of a legislative regime that is different from the one that applies in this case;

b) though he clearly set out his grounds for requesting the cancellation of the Minister's reimbursement letter, he never addressed the Minister's decision regarding his residence in Canada, as I mentioned previously.

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[14] *Simpson v. Canada (Attorney General)*, 2012 FCA 82, at para. 10.
[15] *Lee Villeneuve v. Canada (Attorney General)*, 2013 FC 498, at para. 51.
[16] GD1 and GD4.

[25] I therefore find that the General Division did not commit an error by failing to appreciate a sufficiently important piece of evidence.

CONCLUSION

[26] The appeal is dismissed.

Jude Samson
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
PERSONS IN ATTENDANCE:	G. K., Appellant