



[TRANSLATION]

Citation: *E. D. v Minister of Employment and Social Development*, 2019 SST 1260

Tribunal File Number: AD-19-290
AD-19-409

BETWEEN:

E. D.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: September 27, 2019

DECISION AND REASONS

DECISION

[1] The appeal as part of file AD-19-409 is allowed. As a result, the appeal as part of file AD-19-290 is dismissed for mootness.

OVERVIEW

[2] In 2008, E. D. (Applicant) applied for an Old Age Security pension and the Guaranteed Income Supplement (GIS). The Minister of Employment and Social Development approved those applications, and payments began in June 2009. However, to maintain his eligibility for the GIS, the Applicant had to maintain his Canadian residence.¹

[3] Following an investigation conducted by the Minister, it determined that the Applicant had not resided in Canada from December 6, 2012, to March 1, 2015. As a result, the Applicant was not eligible for the GIS benefits he had received from July 2013 to February 2015.² He was therefore asked to repay \$30,170.42

[4] The Applicant appealed the Minister's decision to the Tribunal's General Division. The General Division dismissed the appeal in a decision dated September 20, 2018, (first General Division decision). The number AD-19-409 was assigned to the appeal concerning the first General Division decision.

[5] The Applicant then applied to rescind or amend the General Division's first decision in light of new evidence. The General Division refused that application in a decision dated January 30, 2019 (second General Division decision). The number AD-19-290 was assigned to the appeal concerning the second General Division decision.

[6] The Minister accepts allowing the appeal as part of file AD-19-409 and returning the matter to the General Division for reconsideration, including holding a hearing. However, the

¹ Canadian residence is a concept defined in section 21(1) of the *Old Age Security Regulations*.

² The Applicant is eligible for Guaranteed Income Supplement benefits during the month of his departure from Canada and for the next six months.

Minister asks for the appeal in file AD-19-290 to be dismissed. Finally, the Minister submits that the Applicant's applications regarding the calling of witnesses, the provision of legal aid, and the granting of punitive damages should be dismissed.

[7] I accept the Minister's recommendations. The following are the reasons for my decision.

PRELIMINARY MATTERS

[8] I found that the appeal could be decided based on the documents and submissions currently on file and without a hearing given the following:

- a) the Minister's agreement;
- b) the fact that, as a general rule, the Appeal Division does not hear new evidence; and
- c) the Tribunal's obligation to proceed as informally and as quickly as the circumstances and the considerations of fairness and natural justice allow.³

ISSUES

[9] In reaching this decision, I considered the following issues:

- a) Did the General Division breach a principle of natural justice in deciding the matter based on the written record?
- b) Given my response to the first question, has the appeal as part of file AD-19-290 become moot?
- c) Does the Tribunal have the authority to decide on the Applicant's other applications?

ANALYSIS

[10] The *Department of Employment and Social Development Act* (DESD Act) assigns the Appeal Division a limited role. Specifically, the Appeal Division may intervene in a decision of

³ *Social Security Tribunal Regulations*, s 3(1)(a).

the General Division, only if it can find that at least one of the three relevant errors has been committed.⁴ Furthermore, the Appeal Division cannot grant remedies other than those set out by the DESD Act.⁵

Issue 1: Did the General Division breach a principle of natural justice in deciding the matter based on the written record?

[11] The main issue before the General Division was whether the Applicant had resided in Canada from December 6, 2012, to March 1, 2015. To answer this question, the General Division had to assess numerous factors and decide to which country the Applicant's ties were stronger. The Federal Court's teachings indicate that determining a person's residence requires an examination of the whole context of the individual under scrutiny.⁶

[12] In this case, the Applicant insisted that the appeal proceed by way of an in-person hearing.⁷ The Minister agreed that an oral hearing was appropriate in this matter and reserved the right to participate in the oral hearing.

[13] Regardless of the parties' positions, the General Division decided the appeal based on the documents and submissions already on file, that is, without a hearing.

[14] The Applicant notes that the General Division's decision deprived him of the opportunity to present arguments, case law, and evidence and to challenge the content of the contrary evidence.⁸

[15] I recognize that the General Division failed to observe the principles of natural justice in this case, under section 58(1)(a) of the DESD Act. Furthermore, I note that the General Division did not provide reasons for its decision to proceed on the record.

⁴ Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the three relevant errors (also known as grounds of appeal).

⁵ The remedies possible are those set out in section 59(1) of the DESD Act.

⁶ *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 at para 58; *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277 at para 19; *Duncan v Canada (Attorney General)*, 2013 FC 319.

⁷ See, for example, GD1-1 and GD5-3.

⁸ AD1.

[16] I also agree with the solution the Minister has proposed: the matter must be returned to the General Division for reconsideration, which will allow for a hearing.⁹

[17] To avoid any confusion, I am not stating that the Appellant's GIS must be restored. The General Division may dismiss the appeal a second time, but it must deal with the matter and arrive at its own conclusions while respecting the principles of natural justice.

Issue 2: Given my response to the first question, has the appeal as part of file AD-19-290 become moot?

[18] Since the matter will be returned to the General Division for reconsideration, the General Division will have the opportunity to consider the new evidence that was the subject of the application to rescind or amend the General Division's first decision. As a result, the appeal as part of the file AD-19-290 has become moot and must be dismissed.

Issue 3: Does the Tribunal have the authority to decide on the Applicant's other applications?

[19] The Applicant is also asking the Appeal Division to do the following:¹⁰

- a) call witnesses;
- b) order the communication or presentation of documents;
- c) provide him with legal aid (court-appointed counsel);
- d) grant him damages; and
- e) give an order guaranteeing the rights and safety of the Applicant and his immediate family.

[20] I agree with the Minister's submissions on this point. These applications are dismissed.

⁹ AD3; DESD Act, s 59(1).

¹⁰ AD1-19 to AD1-22.

[21] The Tribunal has only the authority that its governing statutes grant it. The Applicant's applications are therefore dismissed because the Tribunal does not have the authority required to decide on those applications.¹¹

[22] Concerning the constitutionality of section 11(7)(d) of the *Old Age Security Act* and section 21(1)(a) of the *Old Age Security Regulations*, the Applicant must meet the requirements set out in section 20 of the *Social Security Tribunal Regulations* before the General Division can consider these arguments. He will be able to do so when the General Division reconsiders his file.

CONCLUSION

[23] The appeal as part of file AD-19-409 is allowed. The matter is referred back to the General Division for reconsideration. The reconsideration must proceed by a hearing. To avoid any potential apprehension of bias, the matter should be assigned to a different General Division member.

[24] The appeal as part of file AD-19-290 and the Applicant's applications mentioned above are dismissed.

¹¹ The only remedies available to the Tribunal are those offered by section 59(1) of the DESD Act. The Appeal Division decided the issue of its power and its duty to provide legal aid in the decision *AP v Canada Employment Insurance Commission*, 2017 SSTA DEI 409, 2017 CanLII 91677, at paras 18 to 24.

[25] Before concluding, it is worth noting that there may be pages missing from the file. For example, document GD5 seems to be missing all of paragraphs 4 to 10. Furthermore, the Applicant's submissions marked RA1 refer to several documents, but their location in the file is not always clear. The General Division must establish that the file is complete before giving its next decision.

Jude Samson
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVES:	E. D., Appellant Sylvie Doire, Representative for the Respondent

Relevant Statutory Provisions

Department of Employment and Social Development Act

Grounds of appeal

58 (1) The only grounds of appeal are that

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division 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.

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Decision

59 (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 in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

Social Security Tribunal Regulations

Informal conduct

3 (1) The Tribunal

- (a) must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit;

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Constitutional Issues

Filing and service

20 (1) If the constitutional validity, applicability or operability of any provision of the *Canada Pension Plan*, the *Old Age Security Act*, the *Employment Insurance Act*, Part 5 of the *Department of Employment and Social Development Act* or the regulations made under any of those Acts is to be put at issue before the Tribunal, the party raising the issue must

- (a) file a notice with the Tribunal that

- (i) sets out the provision that is at issue, and
 - (ii) contains any submissions in support of the issue that is raised; and
- (b) at least 10 days before the date set for the hearing of the appeal or application, serve notice of that issue on the persons referred to in subsection 57(1) of the *Federal Courts Act* and file a copy of the notice and proof of service with the Tribunal.

Failure to prove service

(2) If the proof of service required by paragraph (1)(b) has not been filed in accordance with that paragraph, the Tribunal may, on its own initiative or on the request of a party, adjourn or postpone the hearing.

Time limits for documents and submissions

(3) If a notice is filed under paragraph (1)(a), the time limits for filing documents or submissions set out in these Regulations do not apply and the Tribunal may direct the parties to file documents or submissions within the time limits it establishes.

Old Age Security Regulations

21 (1) For the purposes of the Act and these Regulations,

- (a) a person resides in Canada if he makes his home and ordinarily lives in any part of Canada; and
- (b) a person is present in Canada when he is physically present in any part of Canada.