



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *DV v Minister of Employment and Social Development*, 2020 SST 977

Tribunal File Number: AD-20-797

BETWEEN:

**D. V.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: November 24, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal allows the appeal. The matter is referred back to the General Division for reconsideration.

### **OVERVIEW**

[2] The Appellant, D. V. (Applicant), applied for a survivor's allowance (Allowance). The application was initially approved, but, on further review of the file, the Minister of Employment and Social Development (Minister) changed its decision and determined that the Applicant did not meet all the conditions to be eligible for the Allowance. The Applicant requested a reconsideration of the decision. The Minister denied the application on reconsideration. The Applicant appealed the reconsideration decision to the General Division.

[3] The General Division considered that the provisions of the *Old Age Security Act* (OAS Act) do not allow an applicant to receive the Allowance if the applicant was in a common-law relationship after their partner's death. It determined that the Applicant was in a common-law relationship after her partner's death. The General Division considered that, under the *Old Age Security Regulations*, the Minister may, at any time before or after approval of an application, make an investigation into a person's eligibility. The General Division found that the appeal had no reasonable chance of success, and summarily dismissed the appeal.

[4] The Applicant argues that the Minister was not entitled to destroy the initial letter confirming its approval. The Applicant submits that the Minister is not entitled to reverse its position once it has decided in her favour.

[5] I must determine whether the General Division made an error in summarily dismissing the Applicant's appeal.

[6] I am of the view that the Applicant's appeal should be allowed. The matter is referred back to the General Division for reconsideration.

## **ISSUE**

[7] Did the General Division make an error in summarily dismissing the Applicant's appeal?

## **ANALYSIS**

### **Appeal Division's Mandate**

[8] The Federal Court of Appeal has established that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).<sup>1</sup>

[9] The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[10] Therefore, unless the General Division failed to observe a principle of natural justice, made an error of law, 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, the Tribunal must dismiss the appeal.

### **Did the General Division make an error in summarily dismissing the Applicant's appeal?**

[11] I must determine whether the General Division made an error when it summarily dismissed the Applicant's appeal.

[12] The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.<sup>2</sup>

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

<sup>2</sup> Section 53(1) of the DESD Act.

[13] The Appeal Division has established the test to be applied in the event of a summary dismissal:

- Is it obvious that the appeal is bound to fail, no matter what arguments or evidence might be presented at the hearing?

[14] The General Division considered that the provisions of the OAS Act do not allow an applicant to receive the Allowance if the applicant was in a common-law relationship after their partner's death. It determined that the Applicant had been in a common-law relationship. The General Division considered that, under the *Old Age Security Regulations*, the Minister may, at any time before or after approval of an application, make an investigation into a person's eligibility. It found that the appeal had no reasonable chance of success.

[15] The OAS Act defines a "survivor" as a person whose spouse or common-law partner has died and who has not thereafter become the spouse or common-law partner of another person.<sup>3</sup>

[16] The OAS Act defines a "common-law partner," in relation to an individual, as a person who is cohabiting with the individual in a conjugal relationship at the relevant time, having so cohabited with the individual for a continuous period of at least one year.<sup>4</sup>

[17] The Applicant stated that she did not live with her partner on a continuous basis for three consecutive years. Apparently, there were frequent separations because of her partner's excessive drinking.<sup>5</sup>

[18] I am of the view that the General Division did not explicitly cite the applicable test and consider the very high threshold before summarily dismissing the appeal. Even if it could question the Applicant's claims, the General Division could not properly find that

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<sup>3</sup> Section 2 of the OAS Act.

<sup>4</sup> *Ibid.*

<sup>5</sup> GD6-3.

the appeal manifestly lacked substance and was clearly bound to fail regardless of what evidence or arguments might be presented at a hearing.

[19] The Tribunal finds that the General Division did not apply the proper test in determining that the appeal had to be summarily dismissed. This is an error of law.

[20] For the above reasons, I allow the appeal. Since the record is incomplete, it is appropriate to refer the matter back to the General Division for reconsideration.

### **CONCLUSION**

[21] The Tribunal allows the appeal. The matter is referred back to the General Division for reconsideration.

Pierre Lafontaine  
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES:	D. V., Appellant  Suzette Bernard, Representative for the Respondent