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

Citation: *RP v Minister of Employment and Social Development*, 2020 SST 1002

Tribunal File Number: AD-20-765

BETWEEN:

R. P.

Applicant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: November 20, 2020

DECISION AND REASONS

DECISION

[1] The Claimant's application for leave to appeal is refused.

OVERVIEW

[2] The Claimant, who is now 70 years old, applied for an Old Age Security (OAS) pension and the Guaranteed Income Supplement (GIS) in December 2015. In his OAS application, he claimed to have resided in Canada his entire life.

[3] The Minister approved both applications as of July 2015, the month after the Claimant's 65th birthday. However, the Minister, who had concerns about the Claimant's "dormant" social insurance number, soon suspended his benefits pending completion of an investigation into his Canadian residency. In October 2018, the Minister reinstated the OAS pension but terminated the GIS, noting that the Claimant had failed to consent to interviews or comply with requests to provide documentation. The Minister upheld this decision on reconsideration in April 2020.

[4] The Claimant then appealed the Minister's decision to the General Division of the Social Security Tribunal (Tribunal). Included with his notice of appeal[1] was a list of procedural demands that the Claimant wanted the General Division to address without delay. Among other items, he wanted the Tribunal to disclose the name of the member who would be presiding over his case. In subsequent filings, the Claimant repeated his previous demands and raised more procedural issues.[2]

[5] The General Division scheduled a pre-hearing conference for late August to discuss the issues. The Claimant asked for more time to prepare for the conference, but the General Division

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[1] Claimant's Notice of Appeal to the General Division dated May 25, 2020, GD1.
[2] See Claimant's notice of motion dated July 22, 2020, GD10. The General Division indicated that its interlocutory decision would address only those procedural issues that the Claimant had raised with his Notice of Appeal dated May 25, 2020, or shortly after. The General Division made it clear that its interlocutory decision would not address those issues that were unique to the notice of motion of July 22, 2020, since the Minister had specifically asked for an opportunity to respond to them in writing. The General Division granted this request and set a deadline for reply of September 28, 2020.

refused the request because, in its view, minimal preparation was required. After the Claimant failed to appear at the conference, the General Division proceeded to render an interlocutory, or preliminary, decision on the initial round of procedural issues that the Claimant had raised. The General Division concluded that none of them had merit.[3]

[6] In the meantime, the Claimant had already filed an application for leave to appeal with the Appeal Division.[4] He alleged that the General Division had either acted unfairly or failed to exercise its jurisdiction by not giving him the name of the presiding member. After the General Division issued its interlocutory decision, the Claimant filed further submissions alleging, among much else, that the Tribunal had "lost control of its own processes" by unlawfully deferring to the Administrative Tribunals Support Service of Canada (ATSSC).[5] He also detailed numerous procedural irregularities that he claimed Service Canada, ATSSC, and the Tribunal had variously committed in the course of handling his case.

[7] My task is to decide whether the Claimant's appeal would have reasonable chance of success.

ISSUES

[8] Under the *Department of Employment and Social Development Act* (DESDA), there are only four grounds of appeal to the Appeal Division. A claimant must show that the General Division (i) did not follow procedural fairness; (ii) made an error of jurisdiction; (iii) made an error of law; or (iv) based its decision on an important factual error.[6]

[9] Ordinarily, an appeal can proceed only if the Appeal Division first grants leave to appeal.[7] The Appeal Division will grant leave if it is satisfied that the appeal has a reasonable chance of success.[8] This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.[9]

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[3] General Division interlocutory decision dated September 3, 2020.
[4] Claimant's leave to appeal application dated August 17, 2020, AD1.
[5] Claimant's letter dated September 23, 2020, AD1F.
[6] DESDA, section 58(1).
[7] DESDA, sections 56(1) and 58(3).
[8] DESDA, section 58(2).
[9] *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[10] At this preliminary stage, I have to decide the following questions:

Issue 1: Does the Appeal Division have jurisdiction to consider an application for leave to appeal from an interlocutory decision?

Issue 2: Is there an arguable case that the General Division erred when it dismissed the Claimant's procedural demands in its interlocutory decision?

ANALYSIS

Issue 1: Does the Appeal Division have jurisdiction over interlocutory decisions?

[11] The General Division's decision dated September 3, 2020 is an interlocutory decision, since the merits of the appeal of the Minister's reconsideration decision have yet to be determined. As a result, there is the preliminary question of whether the Appeal Division has jurisdiction to entertain this application for leave to appeal before the General Division has issued a final disposition.

[12] I asked the parties for submissions on this question. The Minister did not respond. The Claimant submitted a brief,[10] but it did not directly address the issue.

[13] There is only one legislative provision that governs the circumstances under which the Appeal Division can consider a matter. Under section 56 of DESDA, an appeal to the Appeal Division "may only be brought if leave to appeal is granted." It makes no exception for interlocutory decisions, procedural matters, or any combination of the two. The only exception occurs when an appeal is brought from a summary dismissal by the General Division. In this case, the Claimant's appeal does not arise from a summary dismissal.

[14] In *Szczecka v. Canada*,[11] the Federal Court of Appeal dismissed an application for judicial review of an interlocutory decision because the remedies available within the applicable

[10] See Claimant's Amendment to the Appeal dated November 3, 2020, AD10.
[11] *Szczecka v. Canada (Minister of Employment and Immigration)*, [1993] F.C.J. No. 934 (FCA).

administrative framework had not been exhausted. The Federal Court of Appeal explained the basis for this principle in *Canada v. C.B. Powell Limited*:[12]

> [P]arties cannot proceed to the court system until the administrative process has run its course. This means that, absent exceptional circumstances, those who are dissatisfied with some matter arising in the ongoing administrative process must pursue all effective remedies that are available within that process; only when the administrative process has finished or when the administrative process affords no effective remedy can they proceed to court.

[15] With this principle in mind, the Appeal Division has taken two approaches to interlocutory decisions:

- In most cases,[13] the Appeal Division has determined that there should be no immediate appeal of an interlocutory decision, except in exceptional circumstances, as long as the General Division remains seized of the matter.
- In a minority of cases,[14] the Appeal Division has interpreted the relevant jurisprudence to mean that recourse to *the courts* is available only after all remedies in the administrative sphere have been exhausted. By implication, *Powell* and related cases do not prevent appeals of interlocutory decisions *within* the administrative framework established by statute.

[16] I am inclined to the second approach. Section 55 of the DESDA states: "*Any* decision of the General Division may be appealed to the Appeal Division by any person who is the subject of the decision… [my emphasis]." The Supreme Court of Canada has said that statutory provisions should be read to give the words their most obvious ordinary meaning which accords with the context and purpose of the enactment in which they occur.[15]

[17] While tribunal members are not bound by the earlier decisions of their colleagues, they should not depart from those decisions without good reason. Based on my reading of section 55

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[12] *Canada (Border Services Agency) v. C.B. Powell Limited*, 2010 FCA 61.
[13] For example, *A.N. v. Minister of Employment and Social Development*, 2015 SSTAD 280 and *W.F. v. Canada Employment Insurance Commission*, 2016 SSTADEI 53.
[14] *Minister of Employment and Social Development v. J.P.*, 2016 SSTADIS 509; *Minister of Employment and Social Development v. P.F.*, 2017 SSTADIS 321.
[15] *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27, at paragraphs 21- 22.

and the relevant jurisprudence, I see good reason to depart from previous Appeal Division decisions that have deemed interlocutory appeals premature.

[18] Given the language in section 55 of the DESDA that "any" decision of the General Division may be appealed to the Appeal Division, I have concluded that I have jurisdiction to deal with this leave to appeal application.

Issue 2: Is there an arguable case that the General Division erred when it dismissed the Claimant's procedural demands?

[19] The Claimant has filed a series of lengthy written submissions to accompany his claim that he has been the victim of various procedural irregularities, committed, first by Service Canada, later by the Tribunal. He claims that the General Division was wrong on every count when it found that his right to fairness had not been compromised or threatened.

[20] Many of the Claimant's submissions at the Appeal Division mirror arguments that he has already made to the General Division. His submissions also include spend considerable time explaining why the Minister was wrong to cut off his benefits. I cannot consider any of this material. Under the narrow parameters of the DESDA, I have no mandate to reassess evidence or re-hear claims for benefits on their merits. However, I am permitted to examine the General Division's interlocutory decision to determine whether there is an arguable case that the presiding member committed errors under the enumerated grounds of appeal.

There is no arguable case that the General Division erred when it declined to order compliance with the SST Regulations

[21] Sections 5 to 9 of the *Social Security Tribunal Regulations* (SST Regulations) deal with the filing of documents with the Tribunal, and the Tribunal's obligation to share filed documents with the other parties to a proceeding. The Claimant alleges that the General Division ignored errors in how the Tribunal managed the documentary record, specifically that it:

- failed to send him copies of two document packages;[16]
- failed to include in the appeal file four of his letters;[17] and

[16] Labelled GD2 and GD3 in the evidentiary record.
[17] Claimant's letters of May 28, 2020, June 8, 2020, June 10, 2020, and June 22, 2020.

- altered or omitted documents that he had sent to the Tribunal.

The General Division considered these allegations in detail and concluded that there was no basis to any of them. First, it found that the Tribunal had, in fact, sent the two packages to the Claimant, but since he had apparently not received them, it asked the Tribunal registry to send him fresh copies.[18] Second, it confirmed that the Claimant's four letters had been received and included in the record, although three of the four had not been shared with the Minister. The General Division ordered these omissions corrected. Finally, since the Claimant had not provided any particulars about the alleged alterations or omissions, the General Division could find no indication that any documents in the file had been tampered with.

[22] The Claimant also alleges that the General Division did nothing to address what he describes as duplication and disorganization in the Minister's filings. I note that the Claimant did not make this argument before the General Division, so the presiding member cannot be blamed for failing to address it in her decision. Even if we assume the Claimant's allegation is true, he has not cited any legislative provision or regulation obliging a party to provide an index or "tidy up" its submissions. He has also failed to explain how a cluttered file might have significantly compromised his right to procedural fairness.

[23] As trier of fact, the General Division was entitled to weigh the available evidence and draw reasonable conclusions about the Claimant's allegations. For the most part, it found that the Tribunal had acted in compliance with the SST Regulations, although it did note minor lapses in document disclosure and promptly ordered corrective action. I do not see any errors in the General Division's findings, nor do I see how the General Division's conduct prejudiced the Claimant's interests in advance of the hearing on the merits of his OAS-GIS case.

There is no arguable case that the General Division erred in declining to add parties to the proceeding

[24] The Claimant asked the Tribunal to add two government officials as parties to the proceedings. I don't see an arguable case that the General Division erred in refusing to do so. As the General Division noted, the Tribunal may add a person as a party to a proceeding if it is

[18] General Division decision, paragraph 28.

satisfied that the person has a "direct interest" in the decision.[19] The General Division also cited a Federal Court of Appeal decision that defined "direct interest" as anything that imposes legal obligations on a person or otherwise affects their legal rights in a clear way.

[25] I see no indication that the General Division erred in its interpretation of the law or its application of the available facts to the law. As the General Division noted, among other reasons, the Assistant Deputy Minister, Service Canada – Ontario Regions is an employee of the Department of Employment and Social Development, and the minister in charge of that department is already a party to this proceeding. As for the chief administrator of the ATSSC, the General Division found no information to support the Claimant's allegation that this official had prevented the SST from ordering the Minister to reconsider its decision to suspend his OAS-GIS payments. In both cases, the General Division found—in my view, correctly—that neither official's legal rights would be affected by the outcome of the Claimant's appeal.

[26] The Claimant believes that the Tribunal unlawfully defers to the ATSSC, which he alleges rejects appeals and applications unless they are pre-approved by Service Canada. The Claimant made this allegation at the General Division, and he is making it again at the Appeal Division. I see no reason to revisit this argument if the General Division has already given it due consideration.

There is no arguable case that the General Division erred in refusing to confirm that the Claimant's April 2020 Notice of Appeal was withdrawn without prejudice

[27] The Claimant says that he submitted a notice of appeal to the General Division that he apparently withdrew before filing a new one on May 25, 2020. The General Division declined to make any ruling on that abortive notice of appeal because it only had access to documents that were the subject of the proceeding before it.

[28] I don't see an arguable case that the General Division erred in refusing to exercise its jurisdiction over this matter or on any other grounds. For reasons that he did not disclose, the Claimant withdrew his first appeal and simply filed a new one the following month. I fail to see how the Claimant's interests were materially harmed by his having to refile his appeal or by the

[19] SST Regulations, section 10(1).

General Division's decision refusal to confirm that his first notice appeal was withdrawn "without prejudice."

[29] The Claimant also took issue with the General Division's finding that the Minister's reconsideration decision was issued in April 2020,[20] arguing that it came in response to a letter of his that was *not* a request for reconsideration. Again, I don't see an arguable case that the General Division erred on this point. The Minister deemed its April 2020 letter to be a reconsideration decision, and I don't see any basis in the law to challenge that label. More to the point, whether it was issued in April 2020 or at some earlier date, what mattered, for the purposes of the General Division proceeding, is that a reconsideration decision was, in fact, ultimately issued. The Minister undoubtedly took longer to complete its reconsideration than the Claimant would have liked, but I don't see how the delay, if that is what it was, significantly affected his interests.

There is no arguable case that the General Division erred in declining to expedite the Claimant's appeal

[30] The General Division refused the Claimant's request to process and adjudicate his appeal "forthwith" because it did not believe he was genuinely interested in having his appeal heard as quickly as possible: "He has demonstrated, on more than one occasion, an affinity for unnecessary obstruction."[21]

[31] I do not see an arguable case on this point. A decision on whether to expedite an appeal is discretionary. The General Division based its decision on the Claimant's refusal to attend a pre-hearing conference, which the presiding member had scheduled in an effort to clarify the issues and to discuss many of the procedural matters that are now the subject of this appeal. As trier of fact, the General Division was within its authority to look at the Claimant's conduct and draw logical conclusions. I see no reason to interfere with the General Division's conclusion in this case.

There is no arguable case that the General Division erred in refusing to schedule a settlement conference

[20] See Minister's letter dated April 22, 2020, GD2-42.
[21] General Division decision, paragraph 53.

[32] At one point in the proceedings, the Claimant asked for a settlement conference, but the General Division saw no point in holding one.

[33] I don't see an arguable case that the General Division erred in turning down the Claimant's request. Section 17 of the SST Regulations says that the Tribunal "may" hold a settlement conference for the purpose of resolving an appeal. Again, use of the word "may" suggests the decision is discretionary, and, in this instance, I saw nothing to indicate that the General Division exercised its discretionary authority less than judiciously.

[34] The General Division noted that the Claimant did not explain why he wanted a settlement conference, and it went on to express "real concern," given his reluctance to participate in a pre-hearing conference, that the Claimant would not attempt to resolve the issues in good faith. I see no reason to overturn a discretionary decision of the General Division where, drawing on available information, it has offered defensible reasons for coming to that decision.

There is no arguable case that the General Division erred in refusing to consider the merits of the Claimant's appeal

[35] The Claimant asked the General Division to, among other things, make a quick ruling that his OAS pension and GIS benefits were stopped without due cause or notice. The General Division refused this request because it went to the substance of the Claimant's appeal. In the General Division's opinion, these issues would be best decided following a hearing in which both parties were given an opportunity to present evidence and arguments supporting their respective cases.

[36] It is understandable why the Claimant might want an instant solution to what he regards as the Minister's oppressive conduct, but the General Division cannot be faulted for wanting to take its time to see that justice is done.

There is no arguable case that the General Division acted unfairly by failing to disclose the presiding member's name sooner

[37] On August 10, 2020, the Claimant wrote to the Tribunal and asked it to disclose the name of the member assigned to his file. He said that the basic principles of justice gave him the right to know who was sitting in judgment of him. The General Division did not immediately respond

to this request but, just over a week later,[22] the presiding member scheduled a pre-hearing conference for August 28, 2020 to introduce herself to the parties and to discuss various preliminary issues.

[38] As noted, the Claimant did not appear. In her interlocutory decision, the presiding member wrote that she had seen no reason to disclose her name earlier and that, in any case, the matter was now moot, or not worth debating, since her name was on the cover page.

[39] Then as now, the Claimant argues that the General Division violated a principle of natural justice by not disclosing the member's name immediately on request. I fail to see a case for this argument. As the General Division noted, the Claimant has never pointed to a legal authority that requires the Tribunal to disclose members' names on demand. Moreover, I fail to see how the Claimant's right to procedural fairness was compromised: the Claimant asked for the member's name on August 10 and the Tribunal put him in a position to know that name as early as August 28—just two-and-a-half weeks later. The Claimant did not appear at the pre-hearing conference but, as the General Division noted, he received the name in writing on September 3. I can't see how the Claimant's interests were prejudiced by this sequence of events.

There is no arguable case that the General Division's Notice of Pre-Hearing Conference was invalid

[40] At the General Division, the Claimant argued that certain documents, including the notice of pre-hearing conference, were invalid because they were not signed by a Tribunal member. The General Division found this submission to be without merit, and I see no arguable case that it erred in doing so. As the General Division noted, there is nothing in either the DESDA or the SST Regulations that requires a notice of hearing to be signed by a member or, for that matter, anyone at all.

[41] The Claimant now says that the General Division acted unfairly by scheduling a pre-hearing conference and issuing an interlocutory decision prematurely. He says that he was not given sufficient opportunity to receive material from the Minister.

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[22] See General Division's notice of pre-hearing conference dated August 19, 2020, GD13.

[42] In my view, this argument does not have a reasonable chance of success on appeal. The General Division made it clear that it was calling a pre-hearing conference for no other reason than to plan for the coming hearing on the Claimant's GIS entitlement. In its notice, and in a subsequent communication, the General Division emphasized that there was "little to prepare for," because the pre-hearing conference would discuss procedural, rather than substantive, issues.[23] Neither party was under any obligation to file written material before the pre-hearing conference, and there was no reason for the Claimant to expect that the Minister would be doing so. It was therefore not reasonable to expect the General Division to postpone the pre-hearing conference or to hold off issuing its interlocutory decision on the slim chance that the Minister might respond to the Claimant's procedural demands. Moreover, it is difficult to see how the Claimant was disadvantaged if the General Division saw fit to proceed without the benefit of Ministerial input.

CONCLUSION

[43] For the reasons discussed above, I have concluded that none of the Claimant's arguments would have a reasonable chance of success on appeal. I don't see an arguable case that the General Division erred in deciding that the Claimant's procedural issues lacked merit.

[44] Leave to appeal is therefore refused. The General Division is free to resume its proceeding.

Member, Appeal Division

REPRESENTATIVE:	R. P., self-represented

[23] Notice of pre-hearing conference dated August 19, 2020 (GD13) and Member's decision letter dated August 26, 2020 (GD17).