Citation: *PS v Minister of Employment and Social Development*, 2022 SST 265

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	P. S.
Representative:	M. R.
Respondent:	Minister of Employment and Social Development
Representative:	Rebekah Ferriss

Decision under appeal:	General Division decision dated October 14, 2021 (GP-20-1840)

Tribunal member:	Neil Nawaz
Type of hearing:	Videoconference
Hearing date:	February 22, 2022
Hearing participants:	Appellant's representative Respondent's representative
Decision date:	April 19, 2022
File number:	AD-21-441

Decision

[1] The appeal is dismissed. The General Division did not make any errors. Its decision stands.

Overview

[2] The Appellant, P. S., is 88 years old. She has been receiving the Old Age Security (OAS) pension and Guaranteed Income Supplement (GIS) since 1998.

[3] In May 2016, the Appellant's daughter and authorized representative informed the Minister that her mother had left Canada for the Philippines on November 18, 2015. In November 2016, she informed the Minister that her mother had returned to Canada on September 13, 2016. In December 2019, the Appellant's representative informed the Minister that her mother had left Canada on August 21, 2018 and had yet to return because of medical problems.

[4] Based on this information, the Minister determined that the Appellant had been absent from Canada for periods exceeding six months. The Minister suspended the Appellant's GIS and assessed her overpayments totalling nearly $17,000.

[5] The Appellant's representative appealed the Minister's assessment to the General Division of the Social Security Tribunal. She asked the General Division to consider her mother's financial circumstances and to use its discretion to erase the assessed overpayment.

[6] The General Division held a hearing by videoconference and dismissed the appeal. It said that the law gives the Minister the right to recover any overpayments to OAS or GIS recipients. It also said that it lacked any discretionary authority to order the Minister to forgive debts to the Crown.

[7] The Appellant appealed the General Division's decision to the Tribunal's Appeal Division. Once again citing her mother's illness and lack of financial resources, she asked for the overpayment to be cancelled.

[8] I allowed this appeal to proceed because I thought there was an arguable case that the Minister exceeded her authority when she reopened her decisions to grant the Appellant OAS benefits. In February, I held a hearing by teleconference to discuss the Appellant's case in full.

[9] At the hearing, I told the parties that I would delay rendering a decision until the Federal Court of Appeal had ruled in a pending case called *Burke*, which was expected to clarify some of the legal issues that the Appellant had raised. After *Burke* was issued on March 15, 2022,[1] I asked the parties to make written submissions on its impact, if any, on their respective cases. The Minister responded to my request by the specified deadline, but the Appellant did not.[2]

Issue

[10] There are four grounds of appeal to the Appeal Division. An Appellant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.[3]

[11] My job is to determine whether any of the Appellant's reasons for appealing fall into one or more of the above categories and, if so, whether they have any merit.

Analysis

[12] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that none of the Appellant's reasons for appealing justifies overturning the General Division's decision.

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[1] See *Attorney General of Canada v Burke*, 2022 FCA 44.
[2] See Minister's letter dated April 8, 2022 (AD04).
[3] *Department of Employment and Social Development Act* (DESDA), section 58(1).

The Appeal Division does not rehear cases

[13] The Appellant's representative comes to the Appeal Division repeating the same arguments that she made at the General Division. She insists that her mother had good reason to remain outside Canada for more than six months. She says that her mother is experiencing financial hardship because her GIS has been cut off.

[14] Unfortunately, given the the narrow grounds of appeal permitted under the law, the Appellant cannot succeed at the Appeal Division simply by rearguing her case. My authority permits me to determine only whether any of the Appellant's submissions fall within the specified grounds appeal and whether any of them have merit. I cannot simply reassess the evidence and substitute my judgement for the General Division's.

The General Division did not misapprehend the facts or misinterpret the law

[15] My review of its decision indicates that the General Division reviewed the available evidence and found that the Appellant was outside Canada from November 2015 to October 2016 and from August 2018 onward.

[16] I see nothing to suggest that the General Division misconstrued evidence or in coming to this conclusion. Indeed, as the General Division noted, the Appellant's representative herself admitted that her mother was absent from Canada for extended periods of more than six months.

[17] The General Division correctly cited the factors that must be considered in assessing Canadian residence[4] and determined that the Appellant was disentitled to OAS benefits from June 2016 to October 2016 and again from March 2019 to present.

[18] I don't see any indication that these findings were based on any errors of fact or law. The Appellant may not agree with the General Division, but it reached its

[4] See General Division Decision, paragraphs 40–45, citing and applying *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 and *Duncan v Canada (Attorney General)*, 2013 FC 319.

conclusion after sorting through a large volume of evidence, including testimony from the Appellant's daughter.

[19] In the end, the Appellant is asking me to reweigh the evidence and reach a conclusion that corresponds to her desired outcome. That is not something I can do under the rules governing the Appeal Division.

The General Division properly interpreted the scope of the Minister's powers

[20] I thought it possible that the General Division made a legal error when it found that the Minister had the power to revisit her past decisions. In particular, I saw an arguable case that the General Division should have considered a line of cases that strictly limit the Minister's ability to "claw back" OAS benefits that it had previously approved.

[21] However, with the arrival of a decision in *Burke*, there is not much left to argue. The Federal Court of Appeal has now provided binding instruction about the extent of the Minister's authority to reopen her past OAS decisions. The Court says that the Minister has wide authority to cut off a recipient's benefits if new information comes to light.

[22] On the face of it, the OASA gives the Minister broad powers to recover what she deems to be overpayment:

- Section 37(1) of the OASA says that any benefit to which the recipient is not entitled must be returned immediately.
- Section 23 of the *Old Age Security Regulations* permits the Minister to, at any time, investigate the eligibility of a person to receive an OAS benefit.

[23] In the past few years, a series of Tribunal decisions have found that the Minister's powers might not be as broad as they appear to be. These decisions, led by a

case called *B.R.*, restricted the Minister's ability to reopen her prior approvals of OAS benefits, despite the wording of the above provisions.[5]

[24] At the time of hearing, the Federal Court of appeal was poised to release its judgement in *Burke*,[6] which adopted a similar line of reasoning to *B.R.* Like the present case, *Burke* involved an OAS recipient whose entitlement to benefits was called into question years after the Minister approved them. As in the present case, the General Division found that the Minister had a nearly open-ended right to reverse her prior approvals and assess overpayments. However, unlike the present case, the Appeal Division overturned the General Division's decision. The Appeal Division, following *B.R.,* found that the Minister had very limited authority to revisit her prior assessments.

[25] The Minister applied to the Federal Court of Appeal for judicial review of the Appeal Division's decision. In a judgement dated March 15, 2022, a panel led by Madam Justice Mary Gleason granted the Minister's application. It agreed with the Minister that the Appeal Division erred in its interpretation of the governing legislation and set aside its decision as unreasonable. In her reasons, Judge Gleason accorded the Minister broad powers to reopen her past entitlement decisions:

> The words of section 37 of the Act and section 23 of the Regulations are "precise and unequivocal", inasmuch as they authorize the Minister to reconsider the eligibility of an individual to old age security benefits "at any time", and to recover payments that should not have been made. An interpretation of the legislation that leads to a different conclusion is thus unreasonable.[7]
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> […]
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> Put simply, the investigative authority under section 23 of the Regulations allows the Minister to reassess an individual's eligibility for benefits where, for example, new information surfaces, or where errors, misrepresentation or even fraud has occurred, ensuring that only those entitled to benefits actually

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[5] See *B.R. v Canada (Minister of Employment and Social Development)*, 2018 SST 844; *Minister of Employment and Social Development v J.A.*, 2020 SST 414; *Minister of Employment and Social Development v M.B.*, 2021 SST 8. This last case went before the Federal Court of Appeal as *Burke*.
[6] *Burke*, see note 1.
[7] *Burke*, paragraph 82.

> receive them. Section 37 of the Act allows the Minister to recover benefits that were improperly paid to a claimant.[8]
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> […]
>
> I agree with the Minister that an interpretation of the powers in section 37 of the Act and section 23 of the Regulations that allows people to keep benefits despite their not meeting the specific residency requirements of the Act is one that is inconsistent with a scheme that provides benefits only to people who meet the eligibility requirement of residency.[9]

[26] The Court's words leave no room for the Appellant to argue that the Minister lacked the authority to retroactively reassess her entitlements. They affirm that the Minister had the right to revisit her prior approvals of the Appellant's GIS and to demand repayment of amounts that she had received improperly.

The General Division could not consider financial hardship or other extenuating circumstances

[27] The Appellant insists that health problem prevented her from travelling and forced her remain outside of Canada for periods longer than six months. Depriving her of benefits, she says, would cause her severe financial hardship for something that was not her fault.

[28] I sympathize with the Appellant, and don't doubt that she is the victim of circumstances beyond her control. However, there is nothing that I can do about it. Both the General Division and the Appeal Division are administrative tribunals, not courts. We are required to follow the letter of the law and cannot take it upon ourselves to right real or perceived wrongs. Support for this position may be found in many cases, which have decided that an administrative tribunal's powers are limited to those found in its enabling statute.[10]

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[8] *Burke*, paragraph 106.
[9] *Burke*, paragraph 113.
[10] This means that the General Division and the Appeal Division do not have any powers except those that are explicitly set out in the DESDA. See *Canada (Minister of Human Resources Development) v Tucker,* 2003 FCA 278.

Conclusion

[29] To summarize, the General Division did not base its decision on any legal or factual errors. It made a full and genuine effort to weigh relevant evidence and apply the law. I see no reason to second-guess its conclusion.

[30] The Supreme Court of Canada, reiterating one of the principles of natural justice, has held that reasons must rest on a "logical connection between the evidence, the law on one hand, and the verdict on the other."[11] In this case, I am satisfied that the General Division successfully linked its findings to the evidence and the law.

[31] For these reasons, the Appellant has not demonstrated to me that the General Division committed an error that falls within the permitted grounds of appeal.

[32] The appeal is therefore dismissed.

Member, Appeal Division

[11] *R. v R.E.M.*, [2008] 3 S.C.R. 3, 2008 SCC 51.