



[TRANSLATION]

Citation: *Minister of Employment and Social Development v TA and LA*, 2022 SST 524

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Minister of Employment and Social Development
Representative: Jessica Grant

Respondent: T. A.
Representative: Étienne Rolland

Added Party: L. A.
Representative: Étienne Rolland

Decision under appeal: General Division decision dated
October 25, 2021 (GP-19-755)

Tribunal member: Jude Samson

Type of hearing: Teleconference

Hearing date: June 14, 2022

Hearing participants: Appellant's representative
Respondent and Added Party's representative

Decision date: June 15, 2022

File number: AD-22-44

Decision

[1] The appeal is allowed. The General Division decision is rescinded (cancelled), and the file is sent back to the General Division for reconsideration with directions.

Overview

[2] T. A. is the Applicant in this case. He applied for an Old Age Security pension and the Guaranteed Income Supplement. The Minister of Employment and Social Development (Minister) approved the applications in November 2007.¹ In these decisions, the Minister found that the Applicant had accumulated over 20 years of residence in Canada.

[3] In 2015, the Minister started an investigation into the Applicant's residence in Canada and suspended his benefits. In 2018, following its investigation, the Minister concluded that the Applicant hadn't resided in Canada since August 1, 2000, and that he had accumulated only 12 years and 246 days of Canadian residence.

[4] As a result, the Minister found that the Applicant wasn't entitled to the benefits he had received. So, the Minister insisted that the Applicant pay back almost \$79,000.

[5] The Applicant appealed the Minister's decision to the Social Security Tribunal's General Division. The General Division decided that the Minister didn't have the power to reassess its November 2007 decision.

[6] The Minister is now appealing the General Division decision to the Appeal Division.

[7] At the hearing, the parties agreed that the General Division had made a relevant error and that I had to intervene in this case. I find that I should respect the agreement between the parties.

¹ Service Canada delivers this program for the Minister.

The parties agree on the outcome of the appeal

[8] At the hearing, the parties agreed on the outcome of the appeal. In summary, the parties agree as follows:

- The General Division decision is based on an error of law.
- In these particular circumstances, I should allow the appeal, rescind the General Division decision, and send the file back to the General Division for reconsideration with certain directions.

I accept the proposed outcome

[9] The General Division relied mainly on two Appeal Division decisions² in finding that the law doesn't give the Minister the power to reassess its November 2007 decision.

[10] However, the Federal Court of Appeal has recently interpreted the Minister's power more broadly.³ The Tribunal has to follow the decisions of the Federal Court of Appeal. This means that the General Division made an error of law by misinterpreting the Minister's powers.⁴

[11] Concerning the appropriate remedy, the parties propose that I send the file back to the General Division. This appeal requires a thorough review of the facts, which the General Division didn't do and which wasn't addressed in submissions before the Appeal Division.

² See *BR v Minister of Employment and Social Development*, 2018 SST 844; and *MB v Minister of Employment and Social Development*, 2021 SST 8.

³ See *Canada (Attorney General) v Burke*, 2022 FCA 44.

⁴ This error is set out in section 58(1)(b) of the *Department of Employment and Social Development Act*.

[12] Lastly, the parties asked me to send the file back to the General Division with these directions:

- If possible, the file should be assigned to the same General Division member, namely Mr. Lazure.
- The General Division has to schedule a pre-hearing conference to discuss how the appeal will proceed.

[13] I accept the parties' proposed remedy.

Conclusion

[14] Based on the information available to me, I am allowing the appeal, rescinding the General Division decision, and sending the file back to the General Division for reconsideration with these directions:

- If possible, the file will be assigned to Mr. Lazure.
- The General Division will hold a pre-hearing conference to discuss how the appeal will proceed.

Jude Samson
Member, Appeal Division