



[TRANSLATION]

Citation: *LR v Minister of Employment and Social Development*, 2022 SST 1377

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: L. R.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated March 29, 2022 (issued
by Service Canada)

Tribunal member: Jean Lazure

Type of hearing:

Decision date: November 28, 2022

File number: GP-22-611

Decision

[1] The appeal is summarily dismissed. This means there won't be a hearing and the Tribunal is closing the appeal file.

[2] The Appellant's (L. R.'s) Old Age Security (OAS) benefits are effectively suspended while he is incarcerated in a federal penitentiary.

[3] This decision explains why I am summarily dismissing the appeal.

Overview

[4] The Appellant applied for an OAS pension. The Minister of Employment and Social Development (Minister) received his application on February 21, 2017.

[5] On October 30, 2017, the Minister wrote to the Appellant¹ and approved his OAS pension application. The Minister also said that [translation] "benefits are suspended for individuals while they are incarcerated for a sentence of two years or more to be served in a federal penitentiary,"² which had been the Appellant's case since April 1999.

[6] On November 9, 2017, the Appellant wrote to the Minister³ to get certain information about the Minister's refusal to give him his pension while he was in prison.

[7] On December 20, 2017, the Minister wrote to the Appellant⁴ to give him certain information and to uphold its initial decision.

[8] On February 28, 2018, the Appellant appealed⁵ the Minister's decision to the Tribunal's General Division.

¹ Pages GD1-8 and GD2-6 of the file.

² Pages GD1-8 and GD2-6.

³ Page GD2-5.

⁴ Pages GD1-10 and GD2-3. It should be noted that this letter didn't have the usual title of "Reconsideration decision letter." Despite this, the parties interpreted the letter as a reconsideration decision, so much so that the Appellant appealed that decision to the Tribunal, and the Appellant's appeal has been before the Tribunal for more than four years.

⁵ Page GD1-1.

[9] On November 29, 2019, my colleague Antoinette Cardillo issued a decision⁶ dismissing the Respondent's appeal. The matter was then the subject of several decisions by our General Division and Appeal Division.

[10] On March 28, 2022, my colleague Jude Samson, from our Appeal Division, allowed the Appellant's appeal, saying: "The matter is returned to the General Division so that the constitutional challenge can follow the proper process, led by a different member."⁷

[11] On October 6, 2022, my colleague Nathalie Léger, from our General Division, made an interlocutory decision. She [translation] "put an end to the *Canadian Charter of Rights and Freedoms* (Charter) process in this matter because the Appellant didn't provide the required record for the appeal to proceed under the Charter process."⁸ She also said that [translation] "Since the Appellant hadn't filed a valid record, the appeal would proceed as a regular appeal."⁹

[12] It was after that decision that the file was assigned to me.

What summary dismissal means

[13] The Tribunal has to summarily dismiss an appeal if it considers that the appeal has no reasonable chance of success.¹⁰ If an appeal doesn't have a reasonable chance of success, it means an appellant doesn't have an argument that could possibly succeed. No matter what evidence or arguments an appellant might present at a hearing, the appeal still would not have a reasonable chance of success.¹¹

[14] If the Tribunal summarily dismisses an appeal, there won't be a hearing and the Tribunal will close the appeal file.

⁶ Page AD1A-1.

⁷ March 28, 2022, Appeal Division decision at page 2.

⁸ October 6, 2022, decision at page 2.

⁹ October 6, 2022, decision at page 5.

¹⁰ See section 53(1) of the *Department of Employment and Social Development Act*, and *Miter v Canada (Attorney General)*, 2017 FC 262.

¹¹ See *The Estate of JB v Minister of Employment and Social Development*, 2018 SST 564 at para 23.

[15] On October 19, 2022, I sent the Appellant a letter¹² explaining that I planned to summarily dismiss his appeal. I asked him to tell me in writing why he thinks his appeal should not be summarily dismissed. I gave the Appellant until November 21, 2022, to reply.

[16] The Appellant hasn't replied to my letter or sent in submissions (arguments).

What I have to decide

[17] I have to decide whether the Appellant's appeal has a reasonable chance of success.

Reasons for my decision

[18] The Appellant's appeal doesn't have a reasonable chance of success.

[19] The Appellant's appeal concerns the non-payment of an OAS pension during his period of incarceration in a federal penitentiary. It appears that the Appellant has been incarcerated in a federal penitentiary since April 1999, which the Appellant has never disputed.¹³

[20] Section 5(3) of the *Old Age Security Act*¹⁴ reads as follows:

Incarcerated persons

(3) No pension may be paid in respect of a period of incarceration — exclusive of the first month of that period — to a person who is subject to a sentence of imprisonment

(a) that is to be served in a penitentiary by virtue of any Act of Parliament;

¹² Before the Tribunal summarily dismisses an appeal, it has to notify an appellant in writing about what it plans to do. It has to give the appellant a reasonable amount of time to make submissions (arguments) too. Section 22(1) of the *Social Security Tribunal Regulations* says this. A copy of the letter I sent to the Appellant is at page ISN-01 of the file.

¹³ This seems to be confirmed at pages GD1-1 and GD1-6, and isn't denied anywhere by the Appellant.

¹⁴ R.S.C. (1985), c. O-9.

[21] The Appellant's February 28, 2018, appeal could have announced a challenge to that provision under the Charter.¹⁵ Such challenges are also subject to a specific procedure.

[22] My colleague Nathalie Léger's decision, which says that the appeal had to proceed as a regular appeal, wasn't appealed by the Appellant. So, there is no challenge to the above provision under the Charter in this case.

[23] As a result, according to the above paragraph, the Appellant can't get an OAS pension while serving a prison sentence in a penitentiary under federal law.

Conclusion

[24] I therefore find that not paying the Appellant an OAS pension while he is incarcerated in a federal penitentiary is correct and in accordance with the law.

[25] This means the appeal doesn't have a reasonable chance of success.

[26] The appeal is summarily dismissed.

Jean Lazure

Member, General Division – Income Security Section

¹⁵ In particular, at pages GD1-5 and GD1-6 of the appeal file, where the Appellant makes specific reference to the Charter.