



[TRANSLATION]

Citation: *GS v Minister of Employment and Social Development*, 2023 SST 715

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	G. S.
Representative:	J. J.
Respondent:	Minister of Employment and Social Development
Representative:	Dani Grandmaître

Decision under appeal:	General Division decision dated July 19, 2021, but issued July 19, 2022 (GP-21-2366)
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Tribunal member:	Jude Samson
Type of hearing:	Videoconference
Hearing date:	February 22, 2023
Hearing participants:	Appellant's representative Respondent's representative
Decision date:	June 6, 2023
File number:	AD-22-902

Decision

[1] I am allowing the Applicant, G. S.'s appeal. Also, I am returning the matter to the General Division for reconsideration, in accordance with the directions below.

Overview

[2] The Minister of Employment and Social Development (Minister) approved the Applicant's application for the Guaranteed Income Supplement (GIS) and paid it to her as of June 2011.

[3] In 2019, the Minister investigated whether the Applicant had re-established her residence in Canada in June 2011, as she had indicated. Following the investigation, the Minister found that the Applicant hadn't re-established her residence in Canada and wasn't eligible for the benefits she had received from June 2011 to September 2019.

[4] The Applicant appealed the Minister's decision to this Tribunal's General Division, but it dismissed her appeal. The Applicant is now appealing the General Division decision to the Appeal Division.

[5] The Minister acknowledges that the General Division didn't provide the Applicant with a fair process at the hearing. I agree. But, I am unable to give the decision that the General Division should have given. As a result, I am sending the matter back to the General Division for reconsideration with a few additional directions to favour procedural fairness.

Issues

[6] The issues are as follows:

- a) Did the General Division give the Applicant a fair process?
- b) If not, how should I address the lack of procedural fairness?

Analysis

[7] I can intervene in this case only if the General Division made at least one of the errors under the law.¹ Based on the language of the law, any lack of procedural fairness could allow me to intervene in this case.

[8] According to the principles of procedural fairness, parties have a right to know the details of the case in dispute, must have a fair and reasonable opportunity to present their case, and have the right to a decision that is made by an impartial person who is free from any reasonable apprehension of bias.

The process before the General Division wasn't fair

[9] The issue before the General Division was whether the Applicant was eligible for the GIS payments she received after June 2011. The answer to that question depended on the Applicant's ability to show, on a balance of probabilities, that she had re-established her residence in Canada as of that month.

– Many factors are considered when assessing a person's residence

[10] A person's residence is a largely factual issue that requires an examination of their whole context.² As part of this analysis, the Tribunal assesses the following factors, established by the Federal Court in *Ding*³:

- real estate and personal property (for example, a house, furniture, car, business, bank account, credit card)
- social ties in Canada (for example, family members, participation in social clubs, religious organizations, and professional associations)

¹ These errors (also called "grounds of appeal") are set out in section 58(1) of the *Department of Employment and Social Development Act*.

² See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76, at para 58; and *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277, at para 32.

³ This is a plain language version of the relevant factors, with a few examples. These factors are reflected in many decisions, including *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76 at para 31.

- other ties in Canada (for example, medical services, insurance policies, driver's licence, rental contracts, lease, loan agreement or mortgage, contracts, utility bills, participation in public services and programs, pension plans, and tax payments)
- ties in another country
- the time spent in Canada compared to other countries
- mode of living (for example, language and culture)

[11] The weight given to each factor may differ from case to case.⁴

– **The Applicant has ties to Canada and her home country**

[12] The Applicant resided in Canada as of May 1976. She returned to her home country in January 1998 for a much longer period than expected. The Applicant says that she returned to Canada to re-establish herself permanently in June 2011. The Applicant points to numerous steps she took in 2011 and 2012 to re-establish her Canadian residence. To name but a few, the Applicant:

- renewed her Canadian passport⁵
- found housing⁶
- updated her status as a Canadian resident with the Québec Health Insurance Plan and the Régie des Rentes du Québec [Quebec pension board]⁷
- renewed her Quebec driver's licence and sold her car in her home country⁸

⁴ This is set out in *Singer v Canada (Attorney General)*, 2010 FC 607, confirmed by 2011 FCA 178.

⁵ See GD2-16.

⁶ See GD2-71.

⁷ See GD2-69, GD2-72, and GD2-178.

⁸ See GD5-40.

- filed her income tax returns⁹
- applied for a pension¹⁰
- got back in touch with friends and family and became involved in sports, cultural, and community activities¹¹

[13] But, the Applicant also maintained the following ties in her home country:

- Her daughter and grandson live there.
- She owns a house, even though her daughter took care of it and takes care of all expenses.
- She goes back every year and stays there a little less than half the year.

[14] So, the General Division had to compare the strength of the Applicant's ties to Canada with that of her ties to her home country.

– **The General Division member's questions raise a reasonable apprehension of bias**

[15] At the start of the hearing, and sometimes afterward, the General Division member said that he was playing devil's advocate.

[16] But, his questions were sometimes loaded with value judgments and personal feelings that the Applicant didn't deserve the GIS because of her lifestyle. The member's questions weren't always relevant to the issue at hand and raise serious questions about his impartiality.¹²

⁹ According to her testimony at the General Division hearing.

¹⁰ GD2-3 to GD2-6 and GD2-12 to GD2-15.

¹¹ See GD2-243, GD2-250, GD2-251, GD2-262, GD2-263, and GD4-2.

¹² See *Yusuf v Canada (Minister of Citizenship and Immigration)* (1991), [1992] 1 FC 629 (CA).

[17] The law sets out the criteria a person must meet to qualify for the GIS. Rather than addressing these factors, the General Division member's questions could lead the Applicant to think that she didn't qualify for the GIS because she:

- wasn't sufficiently destitute¹³
- didn't file income tax returns in Canada while living in her home country and didn't pay enough taxes in Canada¹⁴
- was able to take a vacation¹⁵
- hadn't sufficiently embraced one of the program's objectives of spending benefits on local businesses to support the economy¹⁶
- travelled to another country for cheaper dental services instead of supporting dentists in her community¹⁷
- bought her plane tickets from her home country to save money¹⁸
- failed to convince her daughter to return to Canada and get past the fact that her grandson had close ties to his father and his father's family, all of whom lived in the Applicant's home country¹⁹

[18] My concerns about the General Division member's impartiality taint the entire hearing and the resulting decision.

¹³ Listen to the audio recording of the General Division hearing starting at about 1:53:40 and starting at about 2:49:12.

¹⁴ Listen to the audio recording of the General Division hearing starting at about 2:15:47.

¹⁵ Listen to the audio recording of the General Division hearing starting at about 2:49:12.

¹⁶ Listen to the audio recording of the General Division hearing starting at about 2:49:12.

¹⁷ Listen to the audio recording of the General Division hearing starting at about 1:51:53.

¹⁸ Listen to the audio recording of the General Division hearing starting at about 2:32:00.

¹⁹ Listen to the audio recording of the General Division hearing starting at about 3:17:00. The member seemed to be saying that the father would accept this option because the quality of life in Canada is so much better.

– **The General Division didn't give the Applicant a reasonable chance to present her case**

[19] At the start of the hearing, the Applicant's representative made an opening statement. But, he didn't have the opportunity to present the Applicant's case in the way he wanted. The General Division member engaged in his long series of questions and then allowed the Minister's representative to ask their questions. The Applicant also didn't have an opportunity to clarify or elaborate on what she said in response to the questions from the member and the Minister's representative.

[20] I should add that the General Division approached some of the Applicant's evidence with a degree of skepticism that raises another concern: Would the General Division have applied a standard of proof that went beyond the balance of probabilities?²⁰

I am sending the matter back to the General Division for reconsideration

[21] The Applicant argued strongly that I should give the decision that the General Division should have given. In particular, she pointed out that this issue had been dragging on for years, which had been causing her enormous stress.

[22] I sympathize with the Applicant's situation. But, I find that I have no choice but to send the matter back to the General Division for reconsideration. I reached this conclusion for the following reasons:

- It is essential that the Applicant have a hearing that provides a fair and reasonable opportunity to present her case, that is presided over by an impartial person, and that is free from any reasonable apprehension of bias.

²⁰ See, for example, paras 22, and 52 to 60 of the General Division decision.

- The audio recording of the General Division hearing is of poor quality which prevents me from properly hearing the Applicant's testimony. It would be unfair to both parties for me to rely on this recording if I can't understand everything the Applicant said at the hearing.

Conclusion

[23] I am allowing the appeal and sending the matter back to the General Division for reconsideration by a different Tribunal member. Also, in the interest of fairness, I direct the General Division to remove from the record any copies of its July 19, 2022, decision and the audio recording of the July 5, 2022, hearing.²¹

Jude Samson
Member, Appeal Division

²¹ The decision cover page mistakenly states that it was made on July 19, 2021, instead of July 19, 2022.