

Docket: 2011-1115(OAS)

BETWEEN:

LEONARD L. GONDER,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES
AND SKILLS DEVELOPMENT,

Respondent.

Appeal heard on October 26, 2011, at London, Ontario

Before: The Honourable Justice Wyman W. Webb

Appearances:

For the Appellant:	The Appellant Himself and Angeline Perry
Counsel for the Respondent:	Stéphanie Côté

JUDGMENT

The Appellant's appeal from the decision of the Respondent in relation to the income of the Appellant for the purposes of determining his entitlement to the Guaranteed Income Supplement under the *Old Age Security Act* for the payment period from July 1, 2009 to June 30, 2010 is dismissed, without costs.

Signed at Halifax, Nova Scotia, this 3rd day of November, 2011.

“Wyman W. Webb”

Webb, J.

Citation: 2011TCC505
Date: 20111103
Docket: 2011-1115(OAS)

BETWEEN:

LEONARD L. GONDER,

Appellant,

and

THE MINISTER OF HUMAN RESOURCES
AND SKILLS DEVELOPMENT,

Respondent.

REASONS FOR JUDGMENT

Webb, J.

[1] The Appellant and his spouse are upset that the amount of Guaranteed Income Supplement that they are receiving has been reduced. However, the only matter that can be appealed to this Court is set out in subsection 28(2) of the *Old Age Security Act* (the “OAS”). This subsection provides that:

28. (2) Where, on an appeal to a Review Tribunal, it is a ground of the appeal that the decision made by the Minister as to the income or income from a particular source or sources of an applicant or beneficiary or of the spouse or common-law partner of the applicant or beneficiary was incorrectly made, the appeal on that ground shall, in accordance with the regulations, be referred for decision to the Tax Court of Canada, whose decision, subject only to variation by that Court in accordance with any decision on an appeal under the *Tax Court of Canada Act* relevant to the appeal to the Review Tribunal, is final and binding for all purposes of the appeal to the Review Tribunal except in accordance with the *Federal Courts Act*.

[2] Therefore the appeal to this Court must be in relation to the amount of the Appellant’s income for the purposes of determining the guaranteed income supplement for the purposes of the OAS.

[3] For the payment period from July 1, 2009 to June 30, 2010, the Appellant elected to have his entitlement to the guaranteed income supplement based on his estimated income for 2009 as determined in accordance with the provisions of paragraph 14(6)(a) of the *OAS*. Paragraph 14(6)(a) of the *OAS* provides that:

(6) If, in the circumstances described in paragraph (a) or (b), a person who is an applicant, or is an applicant's spouse or common-law partner who has filed a statement as described in paragraph 15(2)(a), suffers a loss of income due to a termination of or reduction in pension income, the person may, not later than the end of the payment period that is immediately after the current payment period, in addition to making the statement of income required by subsection (1) in the case of the applicant or in addition to filing a statement as described in paragraph 15(2)(a) in the case of the applicant's spouse or common-law partner,

(a) if the loss is suffered in the last calendar year ending before the payment period, file a statement of the person's estimated income for the calendar year ending in the current payment period, which income shall be calculated as the total of

(i) any pension income received by the person in that calendar year,

(ii) the income from any office or employment or any business for that calendar year, and

(iii) the person's income for the base calendar year calculated as though, for that year, the person had no income from any office or employment or any business and no pension income; and

[4] Pension income for the purposes of section 14 of the *OAS* is defined by section 14 of the *Old Age Security Regulations* (the "*OAS Regulations*"). The Appellant had suffered a loss of his worker's compensation payments, which as a result of the provisions of paragraph 14(g) of the *OAS Regulations*, is included as "pension income" for the purposes of section 14 of the *OAS*. The Appellant submitted his statement of income as required for the purposes of paragraph 14(6)(a) of the *OAS* but the Appellant did not include any amount for the purposes of subparagraph 14(6)(a)(iii) of the *OAS*. This subparagraph provides that income shall include the Appellant's income for the base calendar year (which would be 2008 for the payment period from July 1, 2009 to June 30, 2010) excluding any amounts that are income from any office or employment or a business or pension income (as defined for the purposes of this section of the *OAS*).

[5] The Minister added the following amounts, pursuant to the provisions of subparagraph 14(6)(a)(iii) of the *OAS*, to the income of the Appellant:

Interest	\$75
LIRA	\$6,701

[6] The LIRA is a lump sum payment that was made to the Appellant in 2008 from his locked-in retirement account that was held by the Investors Group. As provided in the *Pension Benefits Regulations* made under section 105 of the *Pension Benefits Act* (Nova Scotia), the LIRA is an RRSP that meets certain requirements. Therefore the LIRA payment that the Appellant received in 2008 was a lump sum payment made from an RRSP.

[7] Section 14 of the *OAS Regulations* provides that:

14. For the purposes of section 14 of the Act, “pension income” means the aggregate of amounts received as

- (a) annuity payments;
- (b) alimony and maintenance payments;
- (c) employment insurance benefits;
- (d) disability benefits deriving from a private insurance plan;
- (e) any benefit, other than a death benefit, under the *Canada Pension Plan* or a provincial pension plan as defined in the *Canada Pension Plan*;
- (f) superannuation or pension payments, other than a benefit received pursuant to the Act or any similar payment received pursuant to a law of a provincial legislature;
- (g) compensation under a federal or provincial employee’s or worker’s compensation law in respect of an injury, disability or death;
- (h) income assistance benefits under an agreement referred to in subsection 33(1) of the *Department of Human Resources Development Act* by reason of a permanent reduction in the work force as described in that subsection; and
- (i) income assistance benefits under the Plant Workers’ Adjustment Program, the Fisheries Early Retirement Program or the Northern Cod Adjustment and Recovery Program by reason of a permanent reduction in the workforce.

[8] A lump sum payment from an RRSP is not an annuity payment (paragraph 14(a) of the *OAS Regulations*) nor would it qualify as any of the other payments, benefits or compensation described in the other paragraphs of section 14 of the *OAS Regulations*. Justice Bowie reached the same conclusion in *Drake v. The Minister of Human Resources Development Canada*, 2005 TCC 498. As a result, in determining the amount to be included as provided in subparagraph 14(6)(a)(iii) of the *OAS*, the amount of \$6,701 was not pension income as defined by section 14 of the *OAS Regulations* and therefore had to be included as part of his income for the base calendar year 2008. As well the interest income for 2008 also had to be included.

[9] The Appellant argued that the amount should have been withdrawn from the LIRA in an earlier year. However, the Appellant's income for the purposes of the *OAS* is based on what actually occurred not what might or should have happened.

[10] As a result the Appellant's appeal from the decision of the Respondent in relation to the calculation of his income for the purposes of determining his entitlement to the Guaranteed Income Supplement under the *OAS* for the period from July 1, 2009 to June 30, 2010 is dismissed, without costs.

Signed at Halifax, Nova Scotia, this 3rd day of November 2011.

“Wyman W. Webb”

Webb, J.

CITATION: 2011TCC505

COURT FILE NO.: 2011-1115(OAS)

STYLE OF CAUSE: LEONARD L. GONDER AND THE
MINISTER OF HUMAN RESOURCES
AND SKILLS DEVELOPMENT

PLACE OF HEARING: London, Ontario

DATE OF HEARING: October 26, 2011

REASONS FOR JUDGMENT BY: The Honourable Justice Wyman W. Webb

DATE OF JUDGMENT: November 3, 2011

APPEARANCES:

For the Appellant: The Appellant Himself and
Angeline Perry

Counsel for the Respondent: Stéphanie Côté

COUNSEL OF RECORD:

For the Appellant:

Name:

Firm:

For the Respondent: Myles J. Kirvan
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