Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *O. M. v. Minister of Employment and Social Development,* 2018 SST 1018

Tribunal File Number: AD-18-537

BETWEEN:

O. M.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: October 16, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, O. M., was born in the Philippines, where he spent decades working as a school teacher. He now resides in Canada and is 79 years old.

[3] In June 2017, the Appellant applied for benefits under the *Old Age Security Act* and the *Canada Pension Plan* (CPP), invoking the Agreement on Social Security between Canada and the Republic of the Philippines (the Agreement). The Appellant indicated that he had resided in the Philippines until May 2017, when he entered Canada as a permanent resident.

[4] In July 2017, the Respondent, the Minister of Employment and Social Development (Minister), refused the Appellant's application for the CPP retirement pension because he had not made any contributions to the Canada Pension Plan. The Minister did not address the Appellant's concurrent application for an Old Age Security pension.

[5] The Appellant asked the Minister to reconsider its position, arguing that the provisions of the Agreement applied to him because he had contributed to the Philippine Government Service Insurance System (GSIS) for more than 42 years.

[6] In February 2018, the Minister upheld its decision to deny the Appellant a CPP retirement pension. The Appellant then appealed this decision to the General Division of the Social Security Tribunal, arguing that he qualified for the CPP retirement pension under Article III of the Agreement because he was "subject to the legislation of Canada or the Republic of the Philippines." He said that he was employed as a babysitter in Canada as of June 2017 and had earned $8,250 for his services, although he acknowledged that his earnings were exempt from CPP contributions because he was over 70 years of age.

[7] In a decision dated August 1, 2018, the General Division summarily dismissed the appeal because the General Division was not satisfied that the appeal had a reasonable chance of success. Among other things, the General Division found that the Appellant had never been subject to the legislation of Canada within the meaning of the CPP and the Agreement. It also referred to Article X of the Agreement, which bars coverage to persons who have less than one year of creditable periods under the legislation of either country.

[8] The Appellant has now filed an appeal of the summary dismissal decision with the Tribunal's Appeal Division, alleging errors on the part of the General Division. He insisted that the Agreement qualified him to receive a CPP retirement pension. He argued that whether or not he was "subject to the legislation of Canada," the General Division erred by disregarding Articles III and VI of the Agreement, which say that any person who has been subject to the legislation of either Canada or the Philippines shall be eligible for CPP benefits.

[9] No leave to appeal is necessary in the case of an appeal brought under s. 53(3) of the *Department of Employment and Social Development Act* (DESDA), because there is an appeal as of right when the matter involves a summary dismissal from the General Division.

[10] I have decided that an oral hearing is unnecessary and that the appeal will proceed on the basis of the documentary record because there are no gaps in the file and there is no need for clarification.

ISSUES

[11] According to s. 58 of the DESDA, there are only three grounds of appeal to the Appeal Division: the General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material.

[12] The issues before me are as follows:

Issue 1: Did the General Division apply the correct test for a summary dismissal?

Issue 2: Did the General Division err in its interpretation of the CPP and the Agreement?

ANALYSIS

Issue 1: Did the General Division apply the correct test for summary dismissal?

[13] I am satisfied that the General Division used the appropriate mechanism to dispose of the Appellant's appeal. In paragraph 3 of its decision, the General Division invoked s. 53(1) of the DESDA, correctly citing the provision that permits it to summarily dismiss an appeal that has no reasonable chance of success. However, I acknowledge that it is insufficient to simply cite legislation without properly applying it to the facts.

[14] The decision to summarily dismiss an appeal relies on a threshold test. It is not appropriate to consider the case on the merits in the parties' absence and then find that the appeal cannot succeed. In *Fancy v. Canada*,[1] the Federal Court of Appeal determined that a reasonable chance of success is akin to an arguable case at law. The Court also considered the question of summary dismissal in the context of its own legislative framework and determined that the threshold for summary dismissal is high.[2] The decision-maker must determine whether it is plain and obvious on the record that the appeal is bound to fail. The question is **not** whether the decision-maker must dismiss the appeal after considering the facts, the case law, and the parties' arguments. Rather, the question is whether the appeal is destined to fail regardless of the evidence or arguments that might be submitted at a hearing.

[15] Here, the record shows that the Appellant receives a pension under the GSIS but has never made any valid contributions to the CPP. The General Division correctly applied a high threshold when it found that the appeal had "no reasonable chance of success," because the Appellant had never been subject to the legislation of Canada within the meaning of the CPP and the Agreement.. For reasons that I will explain below, it was plain and obvious on the record that the Appellant's arguments were bound to fail.

---

1 *Fancy v. Canada (Attorney General)*, 2010 FCA 63.
2 *Lessard-Gauvin v. Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; *Breslaw v. Canada (Attorney General)*, 2004 FCA 264.

Issue 2: Did the General Division err in its interpretation of the CPP and the Agreement?

[16] Having reviewed the General Division's decision, I see no error that might warrant intervention.

[17] Under s. 44(1)(*a*) of the CPP, a retirement pension shall be paid to a contributor who has reached 60 years of age. The Appellant has never been a contributor to the Canada Pension Plan, as he, himself, admits. Under s. 2 and s. 49, the contributory period extends, at most, from a contributor's 18th birthday to their 70th. The Appellant was 78 years old when he worked as a babysitter and attempted to contribute to the CPP as a self-employed person; his contributions were properly refunded.

[18] Despite this, the Appellant submits that the Agreement allows his 42 years of contributions to the GSIS to count toward a CPP retirement pension on top of the pension he is already presumably receiving from the Philippines. This hardly strikes me as a fair outcome, and it happens to be prohibited under Article X of the Agreement, which reads:

> Notwithstanding any other provision of this Agreement, if the total duration of the creditable periods accumulated by a person under the legislation of a Party is less than one year, the competent institution of that Party shall not be required to award benefits to that person in respect of those periods by virtue of this Agreement.

[19] I note that the Appellant has not addressed Article X in his submissions. The word "notwithstanding" indicates that it overrides any other provision in the Agreement that may benefit the Appellant. Because the Appellant has less than a year of creditable periods under the CPP—indeed, he has zero creditable periods—the Minister, the Canadian "competent institution," is under no obligation to grant him a retirement pension. In my view, the General Division correctly relied on this provision to summarily dismiss the Appellant's appeal.

[20] The Appellant may feel that this provision is unfair, but the Appeal Division, like the General Division, must follow the letter of the law. We can exercise only such jurisdiction as granted by our enabling statutes and lack the discretion to provide a remedy on compassionate grounds. Support for this position may be found in *Canada v. Tucker*,[3] among many other cases,

[3] *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278.

which have held that administrative tribunals are not courts but statutory decision-makers and are therefore not empowered to provide any form of equitable relief.

CONCLUSION

[21] The Appellant has not proved his eligibility for a CPP retirement pension, nor has he demonstrated how the General Division incorrectly applied the law.

[22] The appeal is therefore dismissed.

Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVE:	O. M., self-represented