



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. Z. v Minister of Employment and Social Development*, 2020 SST 356

Tribunal File Number: AD-20-110

BETWEEN:

J. Z.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: April 23, 2020

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] J. Z. (Claimant) came to Canada as an adult on November 24, 1978. In February 2018, he applied for and Old Age Security Act (OAS) pension . In the application he stated that he wished to begin receiving the pension as soon as he qualified for it.

[3] The Minister of Employment and Social Development approved the application and began to pay the Claimant 39/40ths of a full OAS pension in November 2018 based on his residence in Canada. The Claimant requested that the Minister reconsider its decision and pay him a full OAS pension. The Minister responded by granting the Claimant a full pension starting in December 2018 and assessed an overpayment for the month of November 2018.

[4] The Claimant appealed this decision to the Tribunal. He argued that as of October 2018, he had resided in Canada for 39.9 years, and so his residence should be rounded to 40 years and he should receive the full OAS pension beginning in November 2018. The Tribunal's General Division summarily dismissed the appeal. It decided that the appeal had no reasonable chance of success because the Claimant's residence could not be "rounded up" under the legislation.

[5] The Claimant's appeal from this decision is dismissed. The General Division did not make any errors under the *Department of Employment and Social Development Act*.

PRELIMINARY MATTER

[6] This appeal was decided on the basis of the documents filed with the Tribunal for the following reasons:

- a) The legal issue to be decided is clear and straightforward;
- b) The parties clearly set out their legal position on this issue;

- c) The written record is complete;
- d) The DESD Act states that the Tribunal can decide questions of law and fact necessary to conclude an appeal¹;
- e) The *Social Security Tribunal Regulations* require that appeals be concluded as quickly as the circumstances and considerations of fairness and natural justice permit.²

ANALYSIS

[7] The DESD Act governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or
- d) based its decision on an important factual error.³

[8] The Claimant resided in Canada from November 24, 1978, until he applied for OAS in October 2018. That is 39 years and 312 days. This is undisputed. He argues that since he had 39.9 years of residence, this should be "rounded up" to 40 years residence. He would then meet the 40-year residence requirement for a full OAS pension.

[9] However, the Claimant presented this argument to the General Division. The General Division decision correctly states that the *Old Age Security Act* provides that a person's residence is rounded to the lower full year of residence.⁴ The General Division decision also correctly states that the Tribunal has only the legal authority granted to it in the legislation.⁵ It cannot

¹ *Department of Employment and Social Development Act* s. 64

² *Social Security Tribunal Regulations* s. 3(1)

³ This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

⁴ *Old Age Security Act* s. 3(4); General Division decision at para. 14

⁵ General Division decision at para. 13

change the residence requirements set out in the *Old Age Security Act*. The General Division made no error in law.

[10] The Claimant's repetition of arguments made to the General Division and considered by it is not a ground of appeal under the DESD Act.

[11] I have reviewed the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. There is no suggestion that the General Division failed to provide a fair process.

CONCLUSION

[12] The appeal is dismissed. The Claimant did not present a ground of appeal under the DESD Act.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	J. Z., Appellant Sarah Rooney, Counsel for the Respondent