

Citation: *O. B. v. Minister of Employment and Social Development*, 2015 SSTAD 93

Appeal No: AD-15-14

BETWEEN:

**O. B.**

Applicant

and

**Minister of Employment and Social Development  
(formerly Minister of Human Resources and Skills Development)**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION  
Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Valerie Hazlett Parker

DATE OF DECISION: January 22, 2015

## **DECISION**

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal is granted.

## **INTRODUCTION**

[2] The Applicant applied for an *Old Age Security Act* pension based on her years of residence in Canada and in Italy. She relied on an Agreement signed between these countries to establish her entitlement to this pension. She also claimed that her residency in Italy could be utilized to increase the benefit payable to her to a full pension from a partial pension. The Respondent denied the Applicant's claim for a full pension. The Applicant appealed to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division dismissed the Applicant's appeal on November 11, 2014.

[3] The Applicant sought leave to appeal to the Appeal Division of the Tribunal, and alleged that the General Division had erred in law by considering an Agreement between Canada and Italy that was not in force when making its decision. The Respondent made no submissions regarding this application.

## **ANALYSIS**

[4] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has also found that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[5] Section 58 of the *Department of Employment and Social Development Act* sets out the only grounds of appeal that may be considered to grant leave to appeal from a decision of the General Division (this is set out in the Appendix to this decision). Therefore, I must

decide whether the Applicant has put forward a ground of appeal that has a reasonable chance of success.

[6] The Applicant argued that the General Division examined the wrong Agreement between Canada and Italy when it considered whether she should be entitled to a full *Old Age Security Act* pension. She wrote That Part III Article XI Paragraph 3 of the Agreement of Social Security Between Canada and Italy signed in 1977 is in force and provided her with the relief she sought. This was that her residency in Italy should be considered in determining whether she was entitled to a full pension or a partial pension, and whether the pension could be paid to her in Italy (“exported”).

[7] The General Division decision set out the provisions of an Agreement between Canada and Italy that it relied on in making its decision. The decision cites Article 17, Chapter 2, Paragraph 2 which is different than what the Applicant relied on. The General Division did not set out the date of the Agreement that it relied on. If the General Division relied on an Agreement between Canada and Italy that was not in force, it would be an error in law, which is a ground of appeal under section 58 of the *Department of Employment and Social Development Act*. It has a reasonable chance of success on appeal.

## **CONCLUSION**

[8] The Application granted because the Applicant has presented a ground of appeal that has a reasonable chance of success on appeal.

[9] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

*Valerie Hazlett Parker*  
Member, Appeal Division

## **APPENDIX**

### **Department of Employment and Social Development Act**

58. (1) The only grounds of appeal are that

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.