

Citation: *J. L. v. Minister of Employment and Social Development*, 2015 SSTAD 1321

Date: November 12, 2015

File number: AD-15-1059

APPEAL DIVISION

Between:

J. L.

Applicant

and

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

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] The Applicant applied for and began to receive an *Old Age Security Act* pension and a *Guaranteed Income Supplement*. After receiving these benefits from July 2008 until approximately October 2008 the Respondent conducted an investigation and decided that the Applicant did not meet the Canadian residency requirements to be eligible for these benefits. It stopped paying them to the Applicant and sought repayment of what had been paid. The Applicant requested reconsideration of this decision. The Respondent upheld its decision on reconsideration. The Applicant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing by teleconference and written questions and answers and on June 22, 2015 dismissed the appeal.

[2] The Applicant requested leave to appeal this decision to the Appeal Division. He disagreed with the General Division decision and complained about the investigation.

[3] The Respondent filed no submissions.

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 whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[5] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Section 58 of the Act sets out the only grounds of appeal that can be considered to grant leave to appeal a decision of the General Division (the section is set out in the Appendix

to this decision). Therefore I must decide if the Applicant has presented a ground of appeal that falls within section 58 of the Act and that may have a reasonable chance of success on appeal.

[6] The Applicant, first, made a number of statements that were factual in nature. He submitted that he did not claim that he had not received the *Old Age Security Act* (OAS) and *Guaranteed Income Supplement* (GIS) benefits between July 2006 and December 2008. He also contended that he did not receive any amounts by providing fraudulent information. The Appellant disagreed with the amount that the Respondent stated he received although he did not know the amount actually received. He felt that the Respondent did not take sufficient time to properly complete its investigation and he was not informed of the decision to stop paying his benefits. These statements do not point to any error of law, error of fact or to any breach of the principles of natural justice by the General Division. They are not grounds of appeal that fall under section 58 of the Act. Leave to appeal cannot be granted on the basis of these arguments.

[7] The Applicant also argued that he was not given the opportunity to prove that he lived in Canada during the relevant time. He did not explain how this was to have occurred, or provide examples of other evidence he would have presented to support his claim. The hearing in this matter was conducted by teleconference and by written questions and answers. The General Division decision summarized a great deal of evidence that was presented to support the Applicant's position that he was resident in Canada during the relevant time. On the basis of the material before me I am not satisfied that the General Division did not observe the principles of natural justice in this regard. This ground of appeal does not have a reasonable chance of success on appeal.

[8] The Applicant also argued that he has lived in Canada from 1977 until the present time, leaving only to visit Chile. This argument was presented to the General Division and considered by it in reaching its decision. Its repetition is not a ground of appeal under the Act.

[9] The Applicant submitted further that he did not understand why the time he spent in Canada when he was self-employed and contributing to the *Canada Pension Plan* was not considered. The General Division decision set out in some detail the evidence regarding the Applicant's residence and work history in both Canada and Chile. It specifically considered his *Canada Pension Plan* contributions when he was self-employed. Accordingly I am not satisfied

that the General Division made any error in this regard. This ground of appeal does not have a reasonable chance of success on appeal.

[10] Finally, the Applicant also argued that in 2009 he made contributions in Chile that should be considered to assist him to qualify for the OAS and GIS benefits in Canada. This issue was also specifically addressed in the General Division decision. The Applicant's disagreement with the decision on this issue does not point to any error made by the General Division or to any breach of the principles of natural justice. It is not a ground of appeal that may have a reasonable chance of success on appeal.

CONCLUSION

[11] The Application is refused because the Applicant did not present any ground of appeal that falls within section 58 of the Act and that may have a reasonable chance of success on appeal.

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.

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