Citation: ***F. M. v. Minister of Employment and Social Development,*** **2015 SSTAD 1475**

Date: December 29, 2015

File number: AD-15-1337

APPEAL DIVISION

Between:

F. M.

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 a partial *Old Age Security Act* pension. He claimed that his periods of residence in Canada, the United States and France together totaled at least 20 years and pursuant to treaties between Canada and the United States, and Canada and France, his residence in each of these countries should be totalized and the partial pension payable to him. The Respondent denied his claim initially and after 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 in April 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a teleconference hearing and on October 17, 2015 dismissed the appeal.

[2] The Applicant requested leave to appeal the General Division decision to the Appeal Division of the Tribunal. He argued that the General Division did not observe the principles of natural justice, and that it misinterpreted the terms of the treaty between Canada and the United States regarding periods of contribution and residence.

[3] The Respondent did not file any 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 (see the Appendix to this decision).

Hence, 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] First, the Applicant argued that the General Division failed to observe the principles of natural justice or erred in law. The principles of natural justice are concerned with ensuring that parties to a claim have the opportunity to fully present their case, know and meet the case against them and have the decision made by an impartial decision maker based on the law and the facts. The Applicant did not set out any specifics as to how these principles were not observed by the General Division. The decision does not reveal any breach of these principles. Therefore this ground of appeal does not have a reasonable chance of success on appeal.

[7] The Applicant also put forward a number of arguments that he claimed established that the General Division erred in law. First, he contended that the General Division misinterpreted the treaty documents by assuming that the shortest period of time that could be considered in the United States for residence or contribution was a quarter (stated to be equivalent to three months), thereby denying him sufficient time of residency to qualify for the pension. He argued that the 16 days that he lived in the Canada in March 1981 when his Canadian and United States residency did not overlap should have been "counted" toward the 20 year residency requirement.

[8] The Applicant presented this argument to the General Division at that. The General Division examined the treaty and concluded, based on the wording of the treaty and the legislation, that the shortest period that could be considered was a quarter, and not the 16 days argued by the Applicant. The General Division conclusion in this regard was logical and based on the wording of the relevant materials before it. The General Division made no error in this regard. The repetition of this argument is not a ground of appeal under the Act that may have a reasonable chance of success on appeal.

[9] The Applicant also argued that his residence in the United States in 2010 should be "counted" toward the 20 year residence requirement for the pension. Again, the Applicant presented this argument to the General Division. The General Division considered this argument, and concluded, based on the wording of the treaty, that only periods of contribution

in the United States, not periods of residence, can be "counted" for *Old Age Security Act* purposes. It made no error in so doing.

[10] The General Division relied on a decision of the Federal Court in reaching this decision. The Applicant argued that the General Division erred in relying on this decision without providing any information as to whether this interpretation had been appealed. The decision was not appealed. The General Division made no error in relying on this decision. This argument is not a ground of appeal that may have a reasonable chance of success on appeal.

[11] Further, the Applicant contended that the "principle of equal treatment" set out in the treaty should permit his residence in the United States to be used as residence for the purposes of the *Old Age Security Act* pension entitlement since residents in Canada can qualify to receive the pension based only on residence in Canada, and not based on contributions to the plan. This argument was also presented to the General Division and considered by it. The Applicant's disagreement with the General Division decision on this matter is not a ground of appeal. The General Division made no error in fact or in law in reaching this conclusion. Leave to appeal is not granted on this basis.

[12] The Applicant also argued that as Canada has entered bilateral treaties with both France and the United States, he should be able to rely on his residence in France and in the United States to be totalized to reach the 20 year residence requirement to receive the *Old Age Security Act* pension. The Applicant argued that the treaties do not prevent a claimant from relying on each treaty separately to have his foreign residence recognized and totalized. He submitted that the General Division erred as it relied only on the terms of the treaty between Canada and the United States, and did not consider the Canada-France treaty. I am satisfied that the General Division may have erred in this regard as it did not consider the terms of the treaty between Canada and France. This ground of appeal points to an error in law that may have been made by the General Division. It may have a reasonable chance of success on appeal.

CONCLUSION

[13] The Application is granted only on the ground of appeal set out above that may have a reasonable chance of success on appeal.

[14] 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.

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