



[TRANSLATION]

Citation: *M. H. v. Minister of Employment and Social Development*, 2016 SSTADIS 120

Appeal Number: AD-15-1611

BETWEEN:

M. H.

Applicant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DECISION DATE: March 23, 2016

REASONS AND DECISION

DECISION

[1] The Social Security Tribunal of Canada (Tribunal) refuses leave to appeal before the Appeal Division.

INTRODUCTION

[2] On November 9, 2015, the Tribunal's General Division (DG-SST) found that the Applicant had been continuously absent from Canada for over six months. Therefore, he is entitled to only a partial pension (rather than a full pension) and is not eligible for Guaranteed Income Supplement under subsection 11(7) of the *Old Age Security Act* (OAS). The Respondent can recover the overpayment under section 37 of the *OAS Act*.

[3] On February 1, 2016, the Applicant filed an application for leave to appeal (Application) before the Appeal Division. The Tribunal received the Application within the time limit.

ISSUE

[4] Does the appeal have a reasonable chance of success?

THE LAW AND ANALYSIS

[5] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, “[a]n appeal to the Appeal Division may only be brought if leave to appeal is granted” and the Appeal Division “must either grant or refuse leave to appeal”.

[6] Subsection 58(2) of the *Department of Employment and Social Development Act* states that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

- (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.

[8] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for the Applicant to meet than the one that must be met on the appeal on the merits. At the leave stage, the Applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if any of the above grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction whose response might justify setting aside the decision under review.

[11] In his Application, the Applicant notes that:

- (a) He has never been a permanent resident of the United States (U.S.) and that he would be in the U.S. for four to five months out of the year.
- (b) He has always had his main house in Quebec.
- (c) He had said that he was an American citizen, but that is not true; he still has his Canadian passport.
- (d) To receive a full pension, one must reside in Canada for 40 years, and he lived in Canada from 1944 to 1985, 41 years.
- (e) He should therefore receive a full pension.

(f) He is requesting that the errors be corrected and that his full pension be approved.

[12] The GD-SST's decision includes four pages on the evidence submitted and summarizes the Applicant's explanation of his history in Canada in paragraphs [21] to [31]. His statements that he has never been outside Canada for longer than six months out of the year and that he never became an American citizen are noted.

[13] The GD-SST found that the Applicant has been a U.S. resident since 1985. He reached the age of 18 in 1962. In 1985, the Applicant had not resided in Canada over 40 years since reaching the age of 18. The Applicant's calculations (from 1944 to 1985) are erroneous because he did not realize that the 40 years begin after the age of 18. The calculations based on the OAS Act are explained in the DG-SST's decision.

[14] According to my reading of the file and the GD-SST's decision, the Applicant's arguments concerning his residence in Canada have already been addressed by the GD-SST.

[15] An appeal is not a new hearing on the merits of the Applicant's GIS pension application.

[16] Mere repetition of the arguments already made before the General Division is not sufficient to show that one of the above grounds of appeal has a reasonable chance of success.

[17] Since the Applicant is not raising any of the grounds of appeal set out in subsection 58(1) of the *Department of Employment and Social Development Act*, the appeal has no reasonable chance of success.

CONCLUSION

[18] The application for leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division