



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. C. v. Minister of Employment and Social Development*, 2016 SSTADIS 165

Tribunal File Number: AD-15-1348

BETWEEN:

G. C.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: May 6, 2016

REASONS AND DECISION

OVERVIEW

[1] At its core, this case is about whether the Applicant has at least 20 years of Canadian residency, or the equivalent thereof, to qualify for a partial Old Age Security pension. On September 30, 2015, the General Division determined that as the Applicant did not have sufficient years of Canadian residency or the equivalent thereof, he was not entitled to a pension.

[2] The Applicant filed an application requesting leave to appeal, alleging that the General Division had based its decision on an erroneous finding of fact that it made without regard for the material before it. For the application to succeed, I must be satisfied that the appeal has a reasonable chance of success.

ISSUE

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

SUBMISSIONS

[4] The *Agreement between the Government of Canada and the Government of the United States of America with Respect to Social Security* enables an applicant to use periods of contributions to the United States Social Security System to satisfy the eligibility requirements.

[5] At paragraph 15 of its decision, the General Division found that the evidence established that the Applicant's contributions in the U.S. total 13 years and 9 months.

[6] The Applicant submits that the General Division based its decision on an erroneous finding of fact that it made without regard for the material before it. He claims that the evidence shows that he made contributions to the United States Social Security System in the years 1977, 1978, 1981, 1982, 1983, 1987, 1988, 1989, 1990, 1992, 1993, 1994, 1995, 1996, 1997, and 2003, which totals 16 years. He pointed to a document (AD1- and AD1A-

10) produced by the Department of Social Security in Vermont, which shows each of the 16 years of contributions.

[7] The Social Security Tribunal asked the parties to explain how the document at AD1A-10 established the quarters of coverage of contributions to the U.S. Social Security System.

[8] On April 28, 2016, the Respondent's counsel filed submissions, indicating that upon its review, the information from the U.S. Social Security Administration upon which it relied was not in the hearing file before the General Division. The Respondent therefore is not opposed to granting both the application for leave to appeal and the appeal and returning the matter to the General Division for determination.

[9] On April 29, 2016, the Applicant's counsel filed submissions, responding that the document at AD1A-10 indicates that the Applicant made contributions in each of the quarters of the years 1977, 1978, 1981 to 1983, 1987 to 1990, 1992 to 1997 and 2003, totaling 64 quarters.

ANALYSIS

[10] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (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.

[11] The reasons for appeal must fall within any of the grounds of appeal and I need to be satisfied that the appeal has a reasonable chance of success, before leave can be granted.

The Federal Court of Canada endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[12] The document at AD1A-10 does not confirm that the Applicant made contributions in each of the quarters for the years 1977, 1978, 1981 to 1983, 1987 to 1990, 1992 to 1997 and 2003. Indeed, there is no reference to any quarters of contributions. It is unclear how the General Division determined that the Applicant's contributions totaled 13 years and 9 months. Furthermore, given the Respondent's concession that information which could have established the number of quarters of contributions was missing before the General Division, I am satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[13] The application for leave to appeal is allowed. Given the Respondent's concession, I am inclined to proceed to hearing the matter on the record at the earliest opportunity available, subject to any further submissions from the Applicant. The parties may make submissions within the time permitted under the DESDA, or may, by consent, abridge the time to respond.

Janet Lew
Member, Appeal Division