



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. G. v. Minister of Employment and Social Development*, 2016 SSTADIS 411

Tribunal File Number: AD-15-1151

BETWEEN:

M. G.

Applicant

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

Leave to Appeal Decision by: Janet Lew

Date of Decision: October 21, 2016

REASONS AND DECISION

OVERVIEW

[1] At its core, this case is about whether the Applicant remained resident in Canada after February 2006, for the purposes of determining ongoing entitlement to an Old Age Security (OAS) pension and a Guaranteed Income Security (GIS).

[2] The Applicant seeks leave to appeal the decision of the General Division dated August 19, 2015, which determined that the Applicant was resident in Canada from October 21, 2001 to October 13, 2002, and that he ceased being a resident of Canada in February 2006, for the purposes of determining his ongoing entitlement to an OAS pension and to a GIS. As a result of the decision, the Applicant is required to repay these benefits which he had received up to July 2012. The Applicant maintains that medical absences from Canada from October 21, 2001 to October 13, 2002, from May 28, 2007 to September 19, 2008 and from June 14, 2011 to March 15, 2012 did not interrupt his Canadian residency and that he remains eligible for an OAS pension from May 1, 2005.

[3] The Applicant filed an application requesting leave to appeal on October 26, 2015, without citing any grounds of appeal. He filed additional submissions on June 20, 2016 and October 12, 2016, in response to requests from the Social Security Tribunal that he identify any grounds of appeal, such as whether the General Division might have failed to observe a principle of natural justice, erred in law or 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. He did not articulate any specific grounds under subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA), although suggests that the member did not consider why he was absent from Canada during these periods.

ISSUE

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

ANALYSIS

[5] Subsection 58(1) of the 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.

[6] I need to be satisfied that the reasons for appeal fall within any of the grounds of appeal and 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.

[7] The Applicant explains that he was absent from Canada from October 21, 2001 to October 13, 2002, from May 28, 2007 to September 19, 2008 and from June 14, 2011 to March 15, 2012 for medical reasons. He provided supporting medical documentation, which he indicates he had previously provided. He suggests that the General Division member failed to consider his medical reasons.

[8] The General Division addressed the issue of the Applicant's residence from October 21, 2001 to October 13, 2002. It found that the Applicant's absence lasted less than one year and that it therefore did not interrupt his residence. The member determined that any OAS and GIS benefits paid to the Applicant during this period did not constitute an overpayment.

[9] The General Division did not specifically consider whether the Applicant was absent from Canada from May 28, 2007 to September 19, 2008 and from June 14, 2011 to March 15, 2012, nor address the medical certificates for these periods. Instead, the member

determined whether the Applicant ceased residing in Canada after February 2006, when the Applicant left Canada to remarry in India. This necessarily included the periods when the Applicant was absent from May 28, 2007 to September 19, 2008 and from June 14, 2011 to March 15, 2012.

[10] The General Division acknowledged that although the Applicant continued to maintain some ties to Canada, he did not establish a permanent home. At paragraph 34, the member noted that the Applicant resided with family or had rental accommodations, and that he rented a mail box in Canada. The General Division also noted that the Applicant indicated that he spent the majority of his time in India and that he owned property there. Given the evidence before it, the General Division determined that the Applicant's ties were stronger to India than Canada from February 2006 onwards.

[11] Essentially the Applicant is seeking a review or reassessment of the evidence in his favour. However, a review or reassessment of the evidence does not fall within any of the grounds of appeal under subsection 58(1) of the DESDA. As the Federal Court held in *Tracey*, it is not the role of the Appeal Division to reassess the evidence or reweigh the factors considered by the General Division when determining whether leave should be granted or denied. I am not satisfied that there is a reasonable chance that the Applicant will succeed in demonstrating that a reassessment is appropriate.

[12] It may be that the Applicant has resumed residency in Canada, which might enable resumption of payments, but as that issue was not before the General Division, I have no jurisdiction to consider that matter.

CONCLUSION

[13] The application for leave to appeal is dismissed.

Janet Lew
Member, Appeal Division