Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *S. V. v. Minister of Employment and Social Development*, 2017 SSTADIS 312

Tribunal File Number: AD-16-1036

BETWEEN:

S. V.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: July 4, 2017

REASONS AND DECISION

INTRODUCTION

[1] On May 6, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Applicant did not have 20 years of residency to meet the eligibility requirement for an Old Age Security (OAS) pension under the OAS Act.

[2] The Applicant filed a letter with enclosures that was treated as an incomplete application for leave to appeal (Application) with the Tribunal's Appeal Division on August 16, 2016.

[3] The Tribunal sent a letter to the Applicant on August 19, 2016, acknowledging receipt of an incomplete application and advising him of the information needed to complete the application. The Applicant was given until September 20, 2016, to file the missing information.

[4] The Applicant provided further information only after the deadline had passed. The Application was completed on October 19, 2016, and, therefore, it was not filed within the time limit for appeal to the Appeal Division.

ISSUES

[5] In order for the Application to be considered, an extension of time to apply for leave to appeal must be granted.

[6] In order to succeed on this Application, the Applicant must show that the appeal has a reasonable chance of success.

THE LAW

[7] Pursuant to subsections 57(1) and (2) of the *Department of Employment and Social Development Act* (DESD Act), an application for leave to appeal must be made to the Appeal Division within 90 days after the day on which the decision appealed from was communicated to the appellant. Moreover, "The Appeal Division may allow further time within which an application for leave is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant."

[8] According to subsections 56(1) and 58(3) of the DESD Act, “An 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.”

[9] Subsection 58(2) of the DESD Act provides that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

[10] Subsection 58(1) of the DESD Act states that the only grounds of appeal are 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.

SUBMISSIONS

[11] The Applicant submits the following reasons for the delay in completing his Application:

a) He lives in Chile and it takes more than a month for mail to be delivered to him.

b) He has a severe illness and it was a hard winter.

[12] The Applicant’s reasons for appeal can be summarized as follows:

a) He does meet the 20-year rule, combining his residency periods in Canada, Chile and Australia.

b) He has 10 years, 10 months and 19 days of residency in Canada; six years, nine months in Australia; and three years, five months in Chile; for a total of 21 years and 19 days.

c) The Respondent found, in its reconsideration decision dated February 1, 2012, that he had no “Working Life Residence” in Australia and had less than three years of residency in Chile. It was wrong.

d) The General Division was wrong when it concluded that he did not have over 20 years of residency, combining his Canadian residency with the agreements that Canada has with Australia and Chile.

ANALYSIS

Late Application

[13] The Applicant was late in filing his Application with the Appeal Division. He has provided reasons for his delay, which was approximately one month.

[14] In *Canada (Attorney General) v. Larkman*, 2012 FCA 204, the Federal Court of Appeal held that when determining whether to allow an extension of time, the overriding consideration is that the interests of justice be served.

[15] Therefore, I will consider whether the appeal has a reasonable chance of success.

Reasonable Chance of Success

[16] The Applicant first applied for an OAS pension in November 2010, and the Respondent refused the application in November 2011 (on the basis that the Applicant did not meet all the eligibility requirements of the OAS Act). The Applicant requested a reconsideration of this decision, and the Respondent issued its reconsideration decision on February 1, 2012, maintaining its initial decision.

[17] The Applicant appealed that decision to the Tribunal’s General Division.

[18] The General Division proceeded on the basis of the documents and submissions filed.

[19] The issue before the General Division was whether the Applicant had established that, at the time he left Canada, he had resided in Canada for at least 20 years after reaching the age of 18 so that he could receive payment of a pension living outside of Canada.

[20] The General Division referred to the applicable legislative provisions. It calculated the time he lived in each of the countries as follows:

a) Canada: 10 years, 10 months and 19 days;

b) Chile: three years and five months; and

c) Australia: he did not have any Working Life Residence there, which could be used as periods of residence in Canada.

[21] The Applicant argues that the General Division made an error regarding his years of residency in Australia. He points to a letter from the Australian Government dated January 31, 2013, which states that he and his partner's Australian Working Life Residence "is verified from 4 May 1971 to 1 December 1978, which is a total of 81 months."

[22] I have reviewed the appeal record and note that this letter is in the record at pages GD5-10 and 11. This document was in the materials before the General Division, but there is no reference to it in the General Division's analysis pertaining to Australia. The General Division did not explain how this letter accords with the conclusion that the Applicant did not have any Working Life Residence in Australia.

[23] Therefore, it appears that the General Division may have made a finding of fact—that the Applicant did not have any Working Life Residence in Australia—in a perverse or capricious manner or without regard for the material before it.

[24] This is sufficient to satisfy me that the appeal has a reasonable chance of success under paragraph 58(1)*(c)* of the DESD Act at the leave to appeal stage.

CONCLUSION

[25] The Application is granted under paragraph 58(1)(*c*) of the DESD Act.

[26] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Shu-Tai Cheng
Member, Appeal Division