



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. A. v. Minister of Employment and Social Development*, 2017 SSTADIS 576

Tribunal File Number: AD-17-601

BETWEEN:

M. A.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: October 30, 2017

REASONS AND DECISION

INTRODUCTION

[1] On June 26, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a partial pension under the *Old Age Security Act* was not payable because the Applicant did not meet the residency requirements to be eligible to receive this benefit. The Applicant filed an application for leave to appeal with the Tribunal's Appeal Division on August 31, 2017.

ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs the operations of this Tribunal. According to subsections 56(1) and 58(3) of the DESD Act, an appeal to the Appeal Division may be brought only if leave to appeal is granted, and the Appeal Division must either grant or refuse leave to appeal.

[3] The only grounds of appeal available to the Appeal Division under the DESD Act 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.

[4] Subsection 58(2) of the DESD Act provides that leave to appeal is to be refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

[5] Consequently, I must decide whether the Applicant has presented a ground of appeal under section 58 of the DESD Act that may have a reasonable chance of success on appeal.

[6] The Applicant argues that leave to appeal should be granted because the General Division decision was based on an erroneous finding of fact made without regard to all of the material that was before it. Specifically, he submits that the General Division did not consider that he had provincial medical coverage, and that he attended various medical appointments in Canada during the time in question. Regarding provincial medical coverage, the General Division decision specifically found that this was evidence only that the Applicant stated that he resided in the province for the period of time required to receive this benefit, not that he actually resided in the province. The decision also concluded that the specific time he was in the province could not be determined from this evidence.

[7] The General Division decision did not specifically address the lists of medical visits that the Applicant provided to support his residence claim. However, the Federal Court of Appeal has decided that the Tribunal is presumed to have considered all of the evidence before it, including testimony and written material. Each and every piece of evidence need not be mentioned in the written decision: *Simpson v. Canada (Attorney General)*, 2012 FCA 82. The letters containing the lists of visits were filed with the Tribunal at the same time as the Applicant's affidavit, which was clearly referenced in the decision. The decision also refers to other evidence that the Applicant presented. I am therefore satisfied that the presumption that the General Division considered all of the evidence before it has not been rebutted in this case. This argument is not a ground of appeal that may have a reasonable chance of success on appeal.

[8] I have also reviewed the written record. I am satisfied that the General Division did not overlook or misconstrue any important evidence. The Applicant's written and oral evidence regarding when he came to Canada and his ties to this country and to his country of origin are clearly summarized in the decision.

CONCLUSION

[9] The application for leave to appeal is refused as he did not present a ground of appeal that may have a reasonable chance of success on appeal.

Valerie Hazlett Parker
Member, Appeal Division