



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. C. v. Minister of Employment and Social Development*, 2017 SSTADIS 617

Tribunal File Number: AD-17-59

BETWEEN:

**L. C.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: November 7, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] On October 24, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a full *Old Age Security Act* pension was not payable. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on January 24, 2017.

### ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs this Tribunal's operation. 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 set out in subsection 58(1) of the DESD Act. They are that the General Division failed to observe the principles of natural justice, made an error of law or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard to the material before it. Subsection 58(2) states that leave to appeal is to be refused if the appeal has no reasonable chance of success (see Appendix).

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

[5] The Applicant submits that the General Division based its decision on erroneous findings of fact. In particular, she asserts that the General Division erred when it found that she was in Hong Kong for at least 247 days every year after 2003. The decision clearly sets out the evidentiary basis for this finding, being the statement of travel records from Hong Kong. The Applicant did not present any evidence to dispute this. I am not satisfied that this finding of fact was made perversely, capriciously or without regard to the material that was before the General Division. This ground of appeal does not have a reasonable chance of success on appeal.

[6] The General Division decision also refers to the Appellant having produced one bank statement. In the Application, the Applicant submits that more statements were available and could have been requested. The General Division decision summarized all the evidence before it, and it notes that the Respondent asked the Applicant on more than one occasion to provide various documents and information. The Applicant failed to do this and refused to meet with the Respondent's representative. It is not for the Tribunal to inform parties what evidence they should provide, nor to request certain information from them. Rather, it is for each party to present the evidence they think best supports their case. The Applicant's submission that further evidence could have been provided to the General Division does not point to a ground of appeal under section 58 of the DESD Act.

[7] Similarly, whether the Respondent presented its case properly in this matter is not a ground of appeal under the DESD Act. The Tribunal cannot control how parties conduct their case. The Tribunal's role is to accept the evidence that the parties have presented, weigh it, apply the law to the evidence and reach a decision in accordance with the law and the facts.

[8] The Applicant also contends that the Respondent's investigator showed a lack of due diligence in the investigation that resulted in its decision that she was not entitled to a full *Old Age Security Act* pension. This argument does not point to a ground of appeal under section 58 of the DESD Act. It does not point to any error that the General Division made.

[9] In addition, the Applicant's contention that the General Division neglected to assess her ties to Canada does not have a reasonable chance of success. I have reviewed the written record. I am satisfied that the General Division did not overlook or misconstrue any important evidence. The decision summarized the evidence, and it weighed it to reach a decision. The Applicant's invitation to reweigh this evidence to reach a different conclusion is not a ground of appeal under the DESD Act.

[10] Finally, the Applicant submits that the General Division did not look at her residence from 1982 to 2003. There was no evidence presented to the General Division regarding this time period. The General Division cannot be faulted for failing to consider evidence that was not before it. This ground of appeal does not have a reasonable chance of success on appeal.

## **CONCLUSION**

[11] The Application is refused because the Applicant has not presented a ground of appeal under the DESD Act that has a reasonable chance of success on appeal.

Valerie Hazlett Parke  
Member, Appeal Division

## **APPENDIX**

### **Department of Employment and Social Development Act**

58. (1) The only grounds of appeal are that

(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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.