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

Citation: *H. T. v. Minister of Employment and Social Development,* 2017 SSTADIS 638

Tribunal File Number: AD-17-189

BETWEEN:

H. T.

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: November 14, 2017

Canada

REASONS AND DECISION

INTRODUCTION

On November 30, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Applicant did not meet the residence requirements to be eligible to receive an Old Age Security Act pension. The Applicant filed an application for leave to appeal this decision on February 28, 2017.

ANALYSIS

[1] 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.

[2] The only grounds of appeal available 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).

[3] The Applicant takes issue with some of the findings of fact that the General Division made, and he asks that leave to appeal be granted on this basis. For the reasons set out below, I am not satisfied that the Applicant has presented any ground of appeal that points to an erroneous finding of fact contrary to section 58 of the DESD Act that has a reasonable chance of success on appeal.

[4] First, the Applicant consistently states that he worked in the United States for three years. The decision refers to documents that the Applicant completed that say that he had worked in the United States from 2006 to 2009. He disputes these dates and argues that he returned to Canada in 2006 when his marriage had ended. This statement appears to contradict other evidence set out in the decision regarding when the Applicant returned to Canada.

However, I am not satisfied that this points to an error that was made perversely, capriciously or without regard to the material that was before the General Division. The evidence was not clear about when the Applicant returned to Canada, and the contradictions are noted in the decision. The decision sets out that the Applicant testified that he worked in the United States from 2006 to 2009 and wrote this in his application for the pension. The fact that the Applicant disagrees with this finding of fact does not suggest that it was made perversely, capriciously or without regard to the material that was before the General Division.

[5] The Applicant further submits that he has never spent 11 years in the United States. This finding of fact is set out in paragraph 19 of the decision. It is based on the evidence that was before the General Division. The Applicant's disagreement with this statement does not point to an erroneous finding of fact made by the General Division contrary to section 58 of the DESD Act.

[6] The Applicant also argues that, by the time of the General Division hearing, he had been residing in Canada for over 10 years. This may be so. However, the *Old Age Security Act* (OAS Act) requires that the residence requirement be met at the time of application, which in this case was 2014. Consequently, the fact that the General Division decision neglected to refer to his time of residence to the date of the hearing does not point to any error.

[7] The General Division decision refers to the Respondent having requested that the Applicant provide certain documents to establish his residence, including his passport, records of entry and exit dates to Canada, etc. The Applicant did not provide them. He argues that his passport had never been stamped by immigration authorities as his travel to and from the United States was by private car. He also states that his passport was not renewed because he is not travelling now. Further he asserts that his green card has also expired and that he is not sick, so he has not utilized the Ontario healthcare plan. Although this provides reasons for failing to supply these documents to the Respondent, it does not point to any error that the General Division made.

[8] The Applicant also contends that he now has a Canadian bank account, that he does not live with his siblings when visiting the United States, that the "good friend" he lived with from 1995 to 2006 was his wife, that he has no need for a Canadian unemployment book, as he's

retired, and that the money he made in the United States came back to Canada to pay for training for his children. While these statements provide some explanation for details regarding his history, they also do not point to any erroneous finding of fact that the General Division made.

[9] In paragraph 15, the decision summarizes the applicant's evidence given at the hearing. The Applicant now comments that the fact that he has siblings who reside in the United States does not mean that he has an interest there. This is one point of evidence given, which the General Division weighed with the other oral and written evidence to reach the decision in this matter. No error is identified by this statement.

[10] The Applicant also contends that the General Division errs in paragraph 17 of its decision when it states that he left Canada with his new wife, as she was an American citizen and always resided there. Again, this error was not made contrary to section 58 of the DESD Act, and it is not material to the outcome of the matter.

[11] Finally, the Applicant argues that he has resided in Canada for 40 years, less three years when he worked in the United States, so he is eligible for OAS Act benefits. The General Division decision summarizes the written and oral evidence that was before it, including the inconsistencies in this evidence. I have also reviewed the written record and am satisfied that the General Division did not overlook or misconstrue any important evidence. The General Division based its decision on the facts and the law. It concluded that the Applicant had not presented sufficient evidence to establish his residence in Canada to be eligible for OAS Act benefits. His statement when he seeks to appeal this decision that he had resided in Canada for 37 years does not point to any error that the General Division made.

[12] The Application and the written record also do not point to any error in law, nor do they indicate that the General Division neglected to observe the principles of natural justice.

CONCLUSION

[13] The Application is refused, as the Applicant has not presented a ground of appeal under section 58 of the DESD Act that has a reasonable chance of success on appeal.

Valerie Hazlett Parker
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.