Citation: *K. T. and M. T. v. Minister of Employment and Social Development,*
2017 SSTADIS 622

Tribunal File Number: AD-16-564
AD-16-480

BETWEEN:

K. T.
M. T.

Appellants

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

HEARD ON

DATE OF DECISION: November 9, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1]   The Appellant K. T. was born in Canada in August 1948. She lived in Canada until May 31, 1991, and has lived in France since then. She turned 65 in 2013 and applied for an *Old Age Security Act* pension, and she was awarded 24/40ths of a full pension based on her residence in Canada.

[2]   The Appellant M. T. was born in France in February 1948. He moved to Canada in 1969, became a Canadian citizen in 1976 and returned to France on May 31, 1991. He has resided in France since then. This Appellant also received a territorial workers' compensation payment for the period 1993 to 1995 and a Canada Pension Plan disability pension from 2009 to 2013. He turned 65 in 2013 and applied for an *Old Age Security Act* pension, and he was awarded 22/40ths of a full pension based on his residence in Canada.

[3]   Both Appellants appealed the Respondent's decisions to award them partial pensions. They sought recognition for Mr. M. T.'s receipt of territorial benefits and Canada Pension Plan disability benefits as residential periods under the terms of a treaty between Canada and France. On January 28, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) dismissed their appeals.

[4]   Both Appellants requested leave to appeal the General Division decision, and leave to appeal was granted to each Appellant on May 9, 2017. On June 29, 2017, the Appeal Division joined the appeals.

[5]   This appeal proceeded on the basis of the written record for the following reasons:

   a) The Member had determined that no further hearing would be required;

   b) The parties' submissions clearly identify the legal issues in this proceeding and address them;

   c) There are no gaps in the submissions; and

d) The *Social Security Tribunal Regulations* require the Tribunal to proceed as informally and as quickly as circumstances, fairness and natural justice permit.

THE LAW AND STANDARD OF REVIEW

[6]   The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. According to subsection 58(1) DESD Act 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.

[7]   The Federal Court of Appeal decision *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, decided that administrative tribunals must look first to their governing statutes for guidance in determining their role and what standard of review is to be applied to decisions.

[8]   Paragraphs 58(1)(*a*) and (*b*) of the DESD Act do not qualify errors of law or breaches of natural justice, which suggests that the Appeal Division should afford no deference to the General Division's interpretations on these issues. The word "unreasonable" is not found in paragraph 58(1)(*c*), which deals with erroneous findings of fact. Instead, the test contains the qualifiers "perverse or capricious" and "without regard for the material before it." As suggested by *Huruglica*, these words must be given their own interpretation. The language suggests that the Appeal Division should intervene when the General Division bases its decision on a factual error that is clearly egregious or at odds with the record.

ANALYSIS

[9]   The parties' submissions identify three issues to be decided in this appeal. First, the Appellants contend that their time of residence in Canada should be considered longer because of the terms of the *Agreement Between Canada and France on Social Security* (January 13, 1981) (Canada-France Agreement). The Appellants submit that they were subject to the legislation of Canada after they had begun to reside in France because Mr. M. T. was in receipt of territorial workers' compensation benefits, as well as a Canada Pension Plan disability pension. They also argue that the Federal Court decision in *Canada (Attorney General) v. Simon*, [1998] 4 FCR 3 applies to their situation.

[10]   The first two arguments concern the interpretation of Article 9 of the Canada-France Agreement, which states in part:

> […] Subject to paragraph 2, if, under the terms of this Part, a person other than a person referred to in the first subparagraph of Article VII(b) is <u>subject to the legislation of Canada </u>during any period of residence in the territory of France, that period shall be considered, in respect of that person, his spouse and any dependents who live with him during that period, as a period of residence in Canada for the purposes of the Old Age Security Act. (my emphasis) […]

In addition, Article II of the Canada-France Agreement states the following:

> The legislation to which this Agreement applies is:
>
> In relation to Canada:
>
> (a) the Old Age Security Act;
>
> (b) the Canada Pension Plan

[11]   From this, it is clear that any payment made by a territorial workers' compensation program is not considered by the Canada-France Agreement. Only the *Old Age Security Act* (OAS Act) and the *Canada Pension Plan* (CPP) are relevant. Therefore, the fact that the Appellant received territorial benefits would have no impact on his residence for OAS Act purposes. The General Division did not consider Article II of the Canada-France Agreement. In fact, the decision considers principles of statutory interpretation and the decision of the Federal Court in *Simon* to decide whether the Appellant's receipt of territorial benefits was sufficient for

him to be considered subject to the legislation of Canada. I am satisfied that this was an error in law. The appeal must be allowed.

[12]   The Appellant also received CPP disability benefits for the period of 2009 until 2013. The General Division did not consider this. The decision finds that, for a claimant to be subject to the legislation of Canada, they must contribute to the CPP. The decision speculates about why the wording of the Canada-France Agreement was not more specific in this regard, in the context of the Appellant's receipt of territorial benefits. I am satisfied that this failure to consider whether receipt of CPP disability benefits was sufficient for the Appellant to be subject to the legislation of Canada under the Canada-France Agreement was also an error in law.

[13]   The Appellant also sought to rely on the Federal Court decision in *Simon* to support his appeal. The Respondent contends that this decision is not determinative of the issues before the Appeal Division. Since I am convinced that the General Division erred in law for the reasons set out above and since the appeal must therefore be allowed, it is unnecessary for me to consider this ground of appeal.

[14]   Lastly, the Respondent submits that the General Division decision was correct, so the appeal should be dismissed, even if the reasons for the decision contained errors. It relies on section 55 of the DESD Act, which states that any decision of the General Division may be appealed, not the reasons for the decision. I am not convinced by this argument. The General Division decision was based on errors in law. The application of the correct law is foundational to a decision that is to withstand appellate review. I am not satisfied that the General Division decision was correct in these circumstances.

CONCLUSION

[15]   The appeal is allowed for the reasons set out above. The matter is returned to the General Division for reconsideration.

<div align="right">
Valerie Hazlett Parker
Member, Appeal Division
</div>