



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. R. v. Minister of Employment and Social Development*, 2017 SSTADIS 659

Tribunal File Number: AD-17-156

BETWEEN:

J. R.

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 17, 2017

REASONS AND DECISION

INTRODUCTION

[1] On November 25, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Applicant had not met the residence requirements to be eligible to receive an *Old Age Security Act* pension. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on February 16, 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 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] I must therefore 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 he had provided documents, including banking and employment records, to establish his residence to Service Canada that the Tribunal did not consider. The Tribunal and Service Canada are different entities. Documents must be filed with the Tribunal for them to be considered on an appeal. The Applicant had the opportunity to file any evidence he wished the Tribunal to consider. He received a copy of the documents that the Respondent had produced, so he would have known all of the evidence that it had presented to the Tribunal and if the documents sent to Service Canada had been included. He filed a Notice of Readiness with the Tribunal. He included some documentary evidence with this Notice, and

he indicated that this was all of the evidence he wished to file. It is for parties to decide what evidence to file with the Tribunal. This argument does not point to any ground of appeal under the DESD Act.

[6] In addition, the Applicant argued that the Tribunal did not request that he provide any further documents such as rental contracts. It is not for the Tribunal, as an impartial decision maker, to request evidence or documents from a party. It is for each party to decide what evidence they should present to establish their legal position and do so. This also does not point to any error that the General Division made and is not a ground of appeal under section 58 of the DESD Act.

[7] The Applicant further contends that he paid automobile insurance and filed income tax returns for years in addition to what was established before the General Division, and that he had documents related to his schooling and work. Again, it is for the Applicant to ensure that the relevant documents are filed with the Tribunal. The fact that these documents exist is not a ground of appeal under the DESD Act.

[8] Similarly, the Applicant giving Service Canada permission to contact the Canada Revenue Agency for information is not a ground of appeal.

[9] The Applicant also filed a number of documents to support his position that he resided in Canada for a sufficient period of time to be eligible for an *Old Age Security Act* pension. An appeal before the Tribunal's Appeal Division is not a new hearing. New evidence generally is not permitted on an appeal under the DESD Act: *Canada (Attorney General) v. O'Keefe*, 2016 FC 503. The provision of new evidence in this case is not a ground of appeal that has a reasonable chance of success on appeal.

[10] I have reviewed the General Division decision and the written record. The decision summarizes the evidence that was before it, and the General Division applied the law to the facts to reach a conclusion. I am satisfied that the General Division did not overlook or misconstrue any important evidence. I am also satisfied that it did not make any error in law or fail to observe the principles of natural justice.

CONCLUSION

[11] The Application is therefore refused.

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.