



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. L. v. Minister of Employment and Social Development*, 2017 SSTADIS 669

Tribunal File Number: AD-17-144

BETWEEN:

J. L.

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 21, 2017

REASONS AND DECISION

INTRODUCTION

[1] In 2013, the Applicant applied for an Old Age Security (OAS) pension. The Respondent granted her a partial pension of 3/40 based on her residence in Canada from May 2009 to May 2012. The Applicant requested reconsideration and sought a greater partial pension based on residence in Canada from 2001. The Respondent refused this on reconsideration. The Applicant appealed the reconsideration decision to the Social Security Tribunal of Canada (Tribunal). On November 7, 2016, the Tribunal's General Division allowed the appeal in part, and decided that the Applicant began to reside in Canada in April 2009. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on February 10, 2017, again seeking a partial OAS pension based on residence in Canada since 2001.

ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs the 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). 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 that falls under subsection 58(1) of the DESD Act and that has a reasonable chance of success.

[5] Paragraph 22 of the General Division decision refers to the Federal Court decision in *Canada (Minister of Human Resources Development) v. Ding*, 2005 FC 76. This decision sets out a number of factors that are to be considered when deciding whether a person is resident in Canada for OAS pension purposes. The General Division lists these factors. In paragraph 23 of

the decision, it states, “[h]aving considered the above factors, the Tribunal finds that the Appellant has not established that she was a resident of Canada before April 2009.” There is no explanation of what evidence was presented regarding each of these factors, or how the evidence was weighed. In subsequent paragraphs, the decision refers to the Applicant having purchased a property in Montreal and when she travelled to and from Canada. In the Application, however, the Applicant refers to a great deal of evidence that directly addresses each factor set out in *Ding*. It is not clear whether the General Division considered and weighed this evidence in reaching its decision. This may be an error of law or of fact under subsection 58(1) of the DESD Act. This ground of appeal may have a reasonable chance of success on appeal.

[6] In *Mette v. Canada (Attorney General)*, 2016 FCA 276, the Federal Court of Appeal indicated that it is not necessary for the Appeal Division to address all the grounds of appeal an applicant raises. In that case, Dawson J.A. stated, in reference to subsection 58(2) of the DESDA, that “[t]he provision does not require that individual grounds of appeal be dismissed.” Because I found that a ground of appeal has a reasonable chance of success, I have not considered the remaining grounds of appeal that the Applicant submitted. The parties are not, however, restricted to this ground of appeal in their arguments on appeal.

CONCLUSION

[7] The Application is granted for the reasons set out above.

[8] This decision to grant leave to appeal does not presume the result of the appeal on the merits of the case.

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.