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

Citation: *C. V. v. Minister of Employment and Social Development*, 2018 SST 763

Tribunal File Number: AD-18-339

BETWEEN:

**C. V.**

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: Neil Nawaz

Date of Decision: July 25, 2018

Canada

## DECISION AND REASONS

### DECISION

[1] Leave to appeal is refused.

### OVERVIEW

[2] The Applicant, C. V., was born in Malta in January 1950. In April 2014, he applied for a pension under the *Old Age Security Act* (OASA). The application,[1] which was submitted to Service Canada's International Operations division, invoked the Agreement on Social Security between Canada and Malta (the Canada-Malta Agreement). The Applicant indicated that he had resided in Malta for his entire life except for the period between October 1966 and January 1987, when he lived in Toronto.

[3] International Operations initially determined that the Applicant, having resided in Canada for more than 20 years, would not benefit from the Canada-Malta Agreement and transferred his file to Service Canada's Scarborough office. There, staff realized that the Applicant did not turn 18 years old until January 1968, leaving him with only 19 years in Canada for the purpose of determining his entitlement to an Old Age Security (OAS) pension. The Applicant's file was returned to International Operations.[2]

[4] In July 2015, the Respondent, the Minister of Employment and Social Development (Minister), approved the application under the terms of the Canada-Malta Agreement and awarded the Applicant a partial OAS pension at the rate of 19/40ths of the full amount.

[5] The Applicant appealed the Minister's decision to the General Division of the Social Security Tribunal. In February 2018, the General Division held a hearing by teleconference and subsequently issued a decision finding that the Applicant had resided in Canada after the age of 18 for no more than 19 years. It agreed with the Minister that Article X of the Canada-Malta Agreement permitted the Applicant, as a non-resident of Canada at the time of application, to nevertheless receive a partial OAS pension at 19/40ths of the full amount.

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[1] GD2-14.
[2] As per Service Canada's letter to the Applicant dated February 5, 2015, GD2-8.

[6] In May 2018, the Applicant submitted an application requesting leave to appeal from the Appeal Division, alleging various errors on the part of the General Division.

**REASONS FOR APPEAL**

[7] The Applicant's submissions may be reduced to these points:

- The General Division incorrectly stated in its decision that the Applicant submitted his application to Service Canada's International Operations division in Malta. The Applicant claims that, in fact, he submitted it directly to Service Canada's Scarborough regional office.
- The General Division wrote that Service Canada was "perhaps" mistaken when it initially determined that the Applicant's OAS application could be processed without recourse to the Canada-Malta Agreement. The Applicant replies that Service Canada "undoubtedly" mishandled his file and the result was a "fiasco."
- The General Division failed to recognize that the Minister made a mistake in processing his application at Service Canada's International Operations division. The Applicant insists that his file should have remained in Scarborough.
- During the hearing, the presiding General Division member had to leave the teleconference to check on his barking dog. This interruption was unacceptable and represented a mockery of justice, because it showed that the hearing was conducted from a private residence.
- The General Division wrote in its decision that the Applicant was seeking a full OAS pension. The Applicant claims that, in his prior written correspondence, he never demanded a full pension; only at the hearing before the General Division—while in the midst of litigation—did he assert his entitlement to a full pension.
- The General Division consistently sided with the Minister's position—even when it falsely claimed that it had not made a mistake in processing his application. The Applicant maintains that the Minister's letter of February 5, 2015, constituted a clear admission of error, and the General Division, in turn, erred in failing to recognize it as such.

## ISSUES

[8] According to s. 58 of the *Department of Employment and Social Development Act* (DESDA), there are only three grounds of appeal to the Appeal Division: The General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material. An appeal may be brought only if the Appeal Division grants leave to appeal,[3] but the Appeal Division must first be satisfied that it has a reasonable chance of success.[4] The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.[5]

[9] I must determine whether the Applicant has raised an arguable case based on the following questions:

Issue 1: Did the General Division breach a principle of natural justice by conducting the hearing from a private residence via teleconference?

Issue 2: Did the General Division err in its interpretation of the OASA and the Canada-Malta Agreement?

Issue 3: Did the General Division base its decision on an erroneous finding that the Minister processed the Applicant's OAS application correctly?

## ANALYSIS

### Issue 1: Did the General Division breach a principle of natural justice by conducting the hearing from a private residence via teleconference?

[10] I do not see a reasonable chance of success for this argument. I have listened to the audio recording of the hearing before the General Division and heard no indication that the Applicant's opportunity to present his case was in any way compromised by the choice of format. At the 1:20 mark, the General Division member mentioned that he was speaking from his home office; the Applicant did not object to, or otherwise comment on, this disclosure, even when specifically offered an opportunity to do so (at 7:15). It is true that a dog's barking interrupted the

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[3] DESDA at ss. 56(1) and 58(3).
[4] *Ibid*. at s. 58(2).
[5] *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

proceedings at 17:30, but the member promptly apologized and suspended the hearing to attend to the matter, returning within 30 seconds. The conversation resumed and carried on in the same way it that had before the disturbance—in a manner that I would characterize as relaxed, even convivial.

[11] In February 2017, the Applicant completed a hearing information form (HIF), in which he indicated that he was unable to attend a hearing in person or participate in one by videoconference. The HIF presumably played a role in the General Division's choice of teleconference as hearing format. Section 21 of the *Social Security Tribunal Regulations* gives the General Division wide discretion in how it holds hearings, setting out several possible methods, including teleconference. There is nothing in the provision to prevent a member from convening a teleconferenced hearing from his or her place of residence. This is not to suggest that the General Division's discretion to choose the hearing format can be completely divorced from reason or considerations of fairness, but the Federal Court of Appeal has held that setting aside a discretionary order requires a claimant to prove that the decision-maker committed a "palpable and overriding error."[6] I see nothing like that here.

**Issue 2: Did the General Division err in its interpretation of the OASA and the Canada-Malta Agreement?**

[12] Having reviewed the General Division's decision, I see no error that might warrant intervention. The Applicant alleged that the Canada-Malta Agreement was inapplicable, but he failed to cite any text or passage in support of this position. Under Article VIII of the Canada-Malta Agreement, a creditable period under the legislation of the Republic of Malta may be added to periods of residence in Canada only to assist an applicant in meeting the minimum residence requirements. This applies to both the minimum eligibility requirement of 10 years and the 20-year requirement to receive an OAS pension while residing outside of Canada.

[13] However, once eligibility for the OAS pension has been established, the amount of the OAS pension payable is equal to 1/40th of a full OAS pension for each year of **actual** residence in Canada after the age of 18. Thus, a creditable period from Malta can be used only to determine

[6] *Imperial Manufacturing Group Inc. v. Décor Grates Incorporated*, 2015 FCA 100; *Horseman v. Horse Lake First Nation*, 2015 FCA 122; *Budlakoti v. Canada (Citizenship and Immigration)*, 2015 FCA 139.

**eligibility** for the OAS pension, while Article X of the Canada-Malta Agreement permits the amount payable to be based on Canadian residency only.

[14] In this case, the totalization provisions of Article VIII permitted the Applicant to deem his periods of Maltese coverage as periods of residence in Canada, but only for the purpose of accumulating the minimum 20 years that would make him eligible to receive his partial OAS pension while living outside Canada. However, once eligibility was established, the Applicant's periods of Maltese coverage could not be used to increase the amount of his OAS pension.

[15] I am satisfied that the General Division, in limiting the Applicant's OAS pension to 19/40ths of the full amount, correctly applied the OASA and the Canada-Malta Agreement. The Applicant may feel that these provisions are unfair, but the Appeal Division, like the General Division, must follow the letter of the law. We can exercise only such jurisdiction as granted by our enabling statutes and lack the discretion to provide a remedy on compassionate grounds. Support for this position may be found in *Canada v. Tucker*,[7] among many other cases, which have held that administrative tribunals are not courts but statutory decision-makers and therefore not empowered to provide any form of equitable relief.

**Issue 3: Did the General Division base its decision on an erroneous finding that the Minister processed the Applicant's OAS application correctly?**

[16] The Applicant takes issue with a number of the General Division's findings, but he does not dispute that he arrived in Canada in October 1966 and departed in January 1987, giving him a total of 19 years of residence in Canada after the age of 18. It is this essential fact, applied to the prevailing law, that produced the outcome to which he objects.

[17] As for the Applicant's remaining allegations of factual error, I see no arguable case for any of them. Whether the Applicant submitted his application to a Service Canada office in Malta or Canada is immaterial, as is whether or when he ever demanded a full pension. The Applicant believes that the Minister improperly applied the Canada-Malta Agreement to his claim and therefore processed his application in the wrong Service Canada office. However, the General Division thoroughly addressed this submission in its decision and came to what I regard

[7] *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278.

as a defensible conclusion: it made no difference where the Applicant's claim was processed, so long as the relevant law was applied correctly to established facts. My review of the record indicates that, in its initial review of the Applicant's file, the Minister did indeed make a mistake when it determined that the Applicant's residence in Canada, for the purpose of calculating his OAS pension entitlement, started in October 1966, when he arrived in this country, rather than January 1968, when he turned 18. However, the mistake was fairly quickly caught and corrected before the Minister issued its final decision on the matter. The mistake apparently led to some internal confusion about whether the Canada-Malta Agreement was applicable and therefore which Service Canada office had jurisdiction over the Applicant's file, but it ultimately had no bearing on the outcome. I admit that Service Canada's internal confusion led to a processing delay of a few months, but I do not see it as a "fiasco" worthy of the Appeal Division's intervention. The application was approved a little more than a year after it was filed, and the Applicant was duly paid his OAS pension retroactive to January 2015, the month he turned 65.

[18] In any event, this issue was already adjudicated by the General Division, and the Appeal Division has no authority to reassess evidence on its merits. If the Applicant is asking me to simply substitute my judgment for the General Division's, I am unable to do so. I am only permitted to determine whether any of a claimant's reasons for appealing fall within the grounds specified under s. 58(1) of the DESDA and whether any of these reasons have a reasonable chance of success.

**CONCLUSION**

[19] Because the Applicant has not identified any grounds of appeal under s. 58(1) of the DESDA that would have a reasonable chance of success, the application for leave to appeal is refused.

Member, Appeal Division

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| REPRESENTATIVE: | C. V., self-represented |