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

Citation: *P. P. v. Minister of Employment and Social Development and B. P.*, 2018 SST 1093

Tribunal File Number: AD-18-333

BETWEEN:

P. P.

Appellant

and

Minister of Employment and Social Development

Respondent

and

B. P.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: October 24, 2018

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] P. P. (Claimant) came to Canada in April 1970 and worked in Canada. In August 1984 he took a job with the Commonwealth Secretariat in the United Kingdom. The Claimant was made redundant by the Secretariat in October 2000 or May 2001. He returned to Canada in August 2003.

[3] In 2012, the Claimant applied for an Old Age Security (OAS) pension. The Minister of Employment and Social Development refused the application because the Claimant had not resided in Canada for a sufficient number of years to qualify for the pension. The Claimant appealed this decision to the Tribunal and argued that all of his residence in the UK should be credited as residence in Canada. The Tribunal's General Division dismissed the appeal because it found that the Claimant did not return to Canada within six months of the end of his employment in the UK, so his residence in the UK could not be considered Canadian residence for OAS pension purposes.

[4] Leave to appeal the General Division decision to the Tribunal's Appeal Division was granted, and it was restricted to the issue of when the Claimant's employment with the Commonwealth Secretariat ended. The appeal is dismissed because the General Division made no error in law when it considered this issue.

ANALYSIS

[5] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides only three narrow grounds of appeal that can be considered, namely that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact

made in a perverse or capricious manner or without regard for the material before it.[1] The Claimant argues that the General Division made an error in law when it decided that his employment ended in 2000 or 2001 because he had a binding contract with the Commonwealth Secretariat that did not end until all of the parties' obligations had been met. The Commonwealth Secretariat met its obligations last in 2003 when it paid for the Claimant and his family to travel back to Canada, so this is when his employment ended.

[6] To receive the OAS pension, a claimant must have 20 years of residence in Canada. The Claimant resided in Canada for approximately 17.5 years before he began to work for the Commonwealth Secretariat in the UK. For his time in tehUK to be credited as residence in Canada, the Claimant had to return to Canada within six months of the end of his employment there.[2] The Claimant returned to Canada in November 2003.

[7] The General Division clearly turned its mind to the law regarding when the Claimant's employment ended. The decision states that neither the *Old Age Security Act* nor the *Old Age Security Regulations* define "end of employment," and the General Division considered dictionary definitions of "employment." There are no Tribunal or Court decisions that have defined this term in the *Old Age Security Act* context. The General Division cannot, therefore, be faulted for not considering any such decisions. With no binding case law to consider, the General Division did not err when it considered the ordinary, dictionary definition of employment.

[8] The General Division considered the Merriam-Webster Dictionary definition of employment. It states the legal definition of employment as:

> 1: an activity or service performed for another especially for compensation or as an occupation.
>
> 2: the act of employing: the state of being employed.[3]

The General Division concluded that employment ends when an employee stops being paid for services that they have provided to the employer.[4]

---

[1] DESD Act, s. 58(1)
[2] *Old Age Security Regulations*, ss. 21(4) and 21(5)
[3] General Division decision, para. 37
[4] General Division decision, para. 38

[9] The General Division then considered the evidence, including that the Claimant prepared a Statement of Residency, which explained that his position was terminated prematurely in May 2001.[5] The General Division also considered the evidence that he did not return to Canada following his termination from the Secretariat because he was not informed he had to do so, he had appealed the termination decision,[6] and he had to be available on short notice for hearings.[7] The Claimant also testified that he did not recall travelling to Canada between 2001 and 2003 and that he had no income at that time.[8]

[10] In addition, in letters dated October 2012 and October 2017, the Secretariat stated that the Claimant's employment ended in October 2000. The Arbitral Tribunal that the Claimant appealed his termination decision to refers to a termination date of May 2001.[9]

[11] On this basis, the General Division concluded that the Claimant's employment ended in 2000 or 2001. Which particular date his employment ended was not material because the Claimant did not return to Canada within six months of either date.

[12] The Secretariat did not pay for the Claimant's return travel to Canada until 2003, and the Claimant returned to Canada at that time. However, there was no evidence about when the Secretariat was required to pay for the Claimant's return travel. Without such evidence, the General Division had no basis upon which it could conclude that the Claimant was employed until 2003 because he and the Secretariat intended that he continue to be employed until all terms of the contract had been fulfilled. The General Division did not err when it failed to consider this.

[13] In light of the evidence from the Secretariat and the Claimant that his employment ended in 2000 or 2001, the General Division also did not err when it failed to consider whether a claimant could continue to be employed when providing no services to the employer.

---

[5] GD2-64
[6] GD2-55
[7] GD2-82
[8] General Division decision, para. 40
[9] *Ibid.*, para. 39

[14] Therefore, the General Division did not make an error in law regarding the end of the Claimant's employment.

CONCLUSION

[15] The appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	October 16, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	P. P., Appellant Myrtle Cheeks, Representative for the Appellant and the Added Party Christian Malciw, Counsel for the Respondent B. P., Added Party