



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. K. v Minister of Employment and Social Development*, 2019 SST 983

Tribunal File Number: AD-19-543

BETWEEN:

**B. K.**

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: Valerie Hazlett Parker

Date of Decision: September 13, 2019

## DECISION AND REASONS

### DECISION

[1] Leave to appeal is refused.

### OVERVIEW

[2] B. K. was born in British Columbia. She moved to the United States as a young child. She has lived in both Canada and the United States since the age of 18, remaining in the United States since December 2007.

[3] The Claimant applied for an Old Age Security pension (OAS) in February 2015. The Minister of Employment and Social Development refused the application because it decided that the Claimant had not resided in Canada for 20 years after she turned 18, which is required in order for OAS to be paid to someone who resides outside of Canada.

[4] The Claimant appealed this decision to the Tribunal, and says that she resided in Canada from 1979 to 2007. The Tribunal's General Division held a hearing and allowed the Claimant additional time to provide evidence. It then decided that the Claimant had resided in Canada from October 1979 to February 1986, which is not enough time for OAS to be payable to her. Leave to appeal to the Tribunal's Appeal Division is refused because the Claimant has not presented a ground of appeal that falls under *the Department of Employment and Social Development Act* (DED Act) and on which the appeal has a reasonable chance of success.

### ISSUE

[5] Does the appeal have a reasonable chance of success because the General Division based its decision on an erroneous finding of fact under the DESD Act regarding at least one of the following:

- a) The Claimant did not have a residence in the United States from 1989 to 2007, but stayed with friends or family;
- b) The Claimant did not come to Canada as a visitor in December 2002; she often transported friends from a U.S. airport to her home in British Columbia;

- c) The Claimant obtained provincial healthcare coverage for the first few years she spent in British Columbia;
- d) The Claimant spent summers as a child with her grandmother in Canada;
- e) The Claimant provided the Minister with copies of car registrations, drivers' licenses, passports, and testimony from a witness who assisted her in obtaining residences in Canada; or
- f) The General Division failed to ask the Claimant about her criminal convictions before making a finding on her credibility;

## **ANALYSIS**

[6] The DESD Act governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim, but a determination of whether the General Division made an error under the DESD Act. The Act also states that there are only three kinds of errors that can be considered. They are that the General Division failed to observe a principle of natural justice, 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.<sup>1</sup> In addition, leave to appeal must be refused if the appeal has no reasonable chance of success.<sup>2</sup> Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal that falls under the DESD Act and on which the appeal has a reasonable chance of success. The Claimant's grounds of appeal are considered in this context below.

### **Issue 1: Disagreement with findings of fact**

[7] One ground of appeal that I can consider is whether the General Division based its decision on an erroneous finding of fact. In order to succeed on appeal on this basis, the Claimant must prove three things: that a finding of fact was erroneous (in error); that the finding was made perversely, capriciously, or without regard for the material that was before the General

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<sup>1</sup> DESD Act s. 58(1)

<sup>2</sup> DESD Act s. 58(2)

Division; and that the decision was based on this finding of fact.<sup>3</sup>

[8] The Claimant disagrees with a number of the General Division's findings of fact. However, this is not enough for leave to appeal to be granted without something that points to the General Division having based its decision on an erroneous finding of fact.

[9] First, the Claimant argues that the General Division should have considered that she did not have any other residences than those considered in the General Division decision between 1989 and 2007; rather she stayed with family or friends. However, the General Division did so. The General Division decision summarizes the Claimant's residence from 1949 to 2007,<sup>4</sup> including that the Claimant moved to British Columbia in 1979, that her husband followed her there later, that when they separated the Claimant's husband returned to the United States, that she remarried an American who lived with her in British Columbia until the end of their marriage, that the Claimant stayed with her mother, her children lived with her and her mother in the United States at different times, and that she stayed with friends. Therefore, this ground of appeal does not have a reasonable chance of success on appeal.

[10] Second, the Claimant also argues that she would drive friends from the airport in the United States to her home in British Columbia, which she says supports her contention that she resided in Canada. The General Division decision refers to this. Therefore, this argument does not point to any erroneous finding of fact made by the General Division. Leave to appeal cannot be granted on this basis.

[11] Third, the Claimant argues that she obtained healthcare coverage for the first few years she was in Canada. However, this also does not point to any erroneous finding of fact in the General Division decision. The decision acknowledges that the Claimant thought she had healthcare coverage when she first came to Canada, but she stopped paying premiums and let it lapse.<sup>5</sup> Similarly, the decision says that the Claimant spent summers with her grandmother in Vancouver.<sup>6</sup> The repetition of this evidence does not point to the General Division having based

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<sup>3</sup>*Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

<sup>4</sup> General Division decision at paras. 13-30

<sup>5</sup> *Ibid.* at para. 52

<sup>6</sup> *Ibid.* at para. 13

its decision on an erroneous finding of fact. Leave to appeal is refused on this basis.

[12] Fourth, the Claimant argues that she provided documentary evidence that supported her position that she resided in Canada. The General Division considered this. For example, the General Division decision states that the address on the Claimant's driver's licence is only evidence of what address she was using when she renewed it,<sup>7</sup> and that having vehicle insurance in Canada would be convenient.<sup>8</sup> The appeal does not have a reasonable chance of success on the basis that the General Division failed to consider the Claimant's documentary evidence.

### **Issue 2: Failure to question the Claimant at the hearing**

[13] The Claimant's last ground of appeal is that the General Division found that she was not credible because, in part, she has violated securities laws in three jurisdictions, including having been convicted of securities fraud and obstruction of justice in the United States.<sup>9</sup> The Claimant argues that the General Division should not have made a credibility finding without first asking her about the prosecutions at the hearing. However, the decision states

I asked the Claimant about [the securities prosecutions]. She blamed her problems on the actions of others and her inability to pay for lawyers. However, she did not convince me that I should ignore the results of these proceedings. The Claimant's offences took place at different times over a period of about 20 years. They show she had a longstanding willingness to lie when it was in her financial interest to do so.<sup>10</sup>

This demonstrates that the General Division did ask the Claimant about her convictions, and considered her answers in making the credibility finding. This argument does not point to this finding of fact being erroneous. There is no reasonable chance that the appeal will succeed on this basis.

[14] I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information.

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<sup>7</sup> *Ibid.* at para 50

<sup>8</sup> *Ibid.* at para. 51

<sup>9</sup> *Ibid.* at para. 31

<sup>10</sup> *Ibid.* at para. 32

**CONCLUSION**

[15] Leave to appeal is refused because the Claimant has not presented a ground of appeal upon which the appeal has a reasonable chance of success.

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVE:	B. K., Self-represented
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