



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. K. v Minister of Employment and Social Development*, 2019 SST 1267

Tribunal File Number: AD-19-647

BETWEEN:

D. K.

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: October 23, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] D. K. (Claimant) is a Canadian citizen. He lived in the United Kingdom from 1972 to May 1974, and from October 1985 until the present day. He lived in Canada from May 1974 to October 1985. He applied for a Canadian Old Age Security pension (OAS). The Minister refused the application because it decided that the Claimant had not resided in Canada for long enough to be able to receive the pension while living abroad, and that the treaty between Canada and the United Kingdom did not assist him regarding this.

[3] The Claimant appealed the Minister's decision to the Tribunal. The Tribunal's General Division dismissed the Claimant's appeal, finding that the Claimant had insufficient residence in Canada to be able to receive OAS while living abroad. Leave to appeal this decision to the Tribunal's Appeal Division is refused because the appeal does not have a reasonable chance of success on the basis that the General Division failed to observe the principles of natural justice or made an error in law.

ISSUES

[4] Does the appeal have a reasonable chance of success because the General Division failed to observe a principle of natural justice?

[5] Does the appeal have a reasonable chance of success because the General Division made an error in law in its interpretation of the treaty between Canada and the United Kingdom?

ANALYSIS

[6] The *Department of Employment and Social Development Act* (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 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.¹ In addition, leave to appeal must be refused unless the appeal has a reasonable chance of success.² Therefore, to be granted leave to appeal the Claimant must present a 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 below in this context.

[7] The Old Age Security Act states that in order for a claimant to receive OAS while living outside of Canada, they must have resided in Canada for at least 20 years after turning 18. Canada has also negotiated treaties with some other countries, some of which permit a claimant to use residence in that other country as residence in Canada for this purpose. The Claimant wishes to rely on the treaty between Canada and the United Kingdom (UK) for this purpose.

[8] The Claimant accurately writes in his Application to the Appeal Division that this appeal turns on the interpretation of the treaty between Canada and the UK on social security. It states that if a person is insured under the *Canada Pension Plan* (CPP) during any period of residence in the UK, that period should be considered as a period of residence in Canada for that person.³ It defines a person as "insured" in relation to Canada if contributions have been paid or are payable under the CPP.⁴ This is set out correctly in the General Division decision.

[9] The General Division decision also correctly states that these two treaty sections must be read together. So, in order for the Claimant to be insured under the treaty, he must have paid, or be obliged to pay contributions to the CPP, and he must be insured in order to have qualifying residence.

[10] The Claimant argues that the principles of natural justice require that specific wording is necessary if a claimant is to be denied a benefit under legislation. However, the principles of natural justice are not specifically concerned with statutory wording. They are concerned with ensuring that parties to an appeal have the opportunity to present their case to the tribunal, have

¹ DESD Act s. 58(1)

² DESD Act s. 58(2)

³ Treaty between Canada and the UK s. 8

⁴ *Ibid.* s. 1

the opportunity to know and answer the other party's legal case, and to have a decision made by an independent decision maker based on the law and the facts. The Claimant's argument does not point to the General Division having failed to observe these principles. He also does not point to any legal authority that says that specific language is necessary to deny a claimant a benefit, so this argument also does not point to the General Division having made an error in law.

[11] The Claimant also argues writes that Canada could have entered a treaty that had "totalization" provisions in it (sections that permit residence in one country to count as residence in the other). That is so. However, although such terms are found in other treaties, they are not present in the treaty between Canada and the UK. There is no reasonable chance of success on appeal because the General Division made an error in law in this regard.

[12] In addition, the Claimant argues that because the UK has increased his pension because of his Canadian residence, Canada should do the same because the treaty between Canada and the UK is bilateral. However, the treaty does not require this. This ground of appeal points to no error made by the General Division.

[13] Further, the Claimant says that because he made some payments to the *Canada Pension Plan* in the past he is insured and continues to be insured. He presented this argument to the General Division and it was considered.⁵ The General Division decision explains why this argument failed. Its repetition is not a ground of appeal under the DESD Act.

[14] Finally, the Claimant says that the General Division made a perverse finding that he should have been making contributions to the CPP from 1985 to 2014. However, the General Division did not make this finding. Therefore, this argument does not point to any error made by the General Division, and leave to appeal cannot be granted on this basis.

[15] I have reviewed the application to the Appeal Division and the written record. The General Division did not overlook or misconstrue any important facts. It stated the law correctly and applied it to the facts. It observed the principles of natural justice.

⁵ General Division decision at para. 18, 19

CONCLUSION

[16] Leave to appeal is refused because the Claimant has not presented a ground of appeal that falls under the DESD Act and on which the appeal has a reasonable chance of success.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	D. K., Self-represented
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