



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. B. v Minister of Employment and Social Development*, 2019 SST 730

Tribunal File Number: AD-19-333

BETWEEN:

**S. B.**

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: October 25, 2019

## DECISION AND REASONS

### DECISION

[1] Leave to appeal is refused.

### OVERVIEW

[2] S. B. (Claimant) applied for an Old Age Security pension in January 2016. The Minister of Employment and Social Development granted him this pension in June 2016, the month after he turned 65. The Claimant also applied for a Guaranteed Income Supplement (GIS). The Minister refused this application because it decided that the Claimant was not a resident in Canada, and had not re-established residence in Canada in April 2016 and thereafter.

[3] The Claimant appealed the Minister's decision regarding his eligibility for GIS to the Tribunal. The Tribunal's General Division dismissed the appeal for the same reason. The Claimant's application to the Appeal Division is refused because it does not have a reasonable chance of success. There is no basis that the General Division made an error under the *Department of Employment and Social Development Act* (DESD Act), and the Claimant cannot raise arguments under *the Canadian Charter of Rights and Freedoms* (Charter) or the *Canadian Bill of Rights* for the first time before the Tribunal's Appeal Division.

### ISSUES

[4] 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?

[5] Does the appeal have a reasonable chance of success because of the delay in concluding the matter, or because the Minister refused to provide information to the Claimant?

[6] Does the appeal have a reasonable chance of success because the General Division failed to observe a principle of natural justice by not holding an oral hearing?

[7] Does the appeal have a reasonable chance of success because the Claimant's rights under the Charter or the *Canadian Bill of Rights* were infringed?

## ANALYSIS

[8] 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 does not have a reasonable chance of success.<sup>2</sup> 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. His grounds of appeal are considered below.

### **Issue 1: Erroneous finding of fact**

[9] One ground of appeal that I can consider is whether the General Division based its decision on an erroneous finding of fact under the DESD Act. 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 Division; and that the decision was based on this finding of fact.<sup>3</sup>

[10] In the documents filed with the Appeal Division, the Claimant says that the General Division "twisted" information. However, the Claimant does not specify what information was "twisted", or point to any factual inaccuracies. I have read the General Division decision and reviewed the written record. The basic facts are not in dispute: the Claimant lived in Canada from May 1951 to March 2001. He later resided in the Philippines. The Claimant's current residence is in the Philippines. The Claimant applied for OAS in January 2016. The General Division considered this information, along with the evidence about the Claimant's return to Canada in April 2016. Based on all of the evidence, the General Division concluded that the Claimant had not re-established residence in Canada because his plans were in flux when he

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

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

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

came here in 2016,<sup>4</sup> he did not have a clear intention to remain in Canada,<sup>5</sup> and he made what the General Division considered inconsistent statements about his return to the Philippines after this.<sup>6</sup>

[11] The General Division did not overlook or misconstrue any important information. The Claimant does not point to any finding of fact that was made in error. Therefore, the appeal does not have a reasonable chance of success on this basis.

### **Issue 2: Time and cost**

[12] Throughout the numerous documents that the Claimant filed with the Appeal Division,<sup>7</sup> he complains about the time that it has taken for a decision to be made, and continues to inquire about the cost of the benefits he applied for. The Claimant's inquiry about cost does not point to the General Division having made any error under the DESD Act. It is not a relevant consideration for this appeal. Leave to appeal cannot be granted because the Minister refused to provide this information to the Claimant.

[13] This matter has taken a long time. The Claimant applied for GIS in 2016, some three years ago. He first filed documents with the Tribunal's Appeal Division in May 2019. He has filed numerous documents in support of his claim. The Tribunal's Appeal Division has tried to conclude this matter quickly and efficiently. For example, I scheduled a Pre-hearing Conference call with all parties to discuss procedural issues associated with a Charter challenge, and to give the parties an opportunity to discuss the relevant law. The Claimant refused to participate.

[14] Delay of proceedings, while undesirable, is not a ground of appeal under the DESD Act. I cannot give the Claimant any legal relief because of the time it has taken for this matter to be concluded.

### **Issue 3: Natural justice**

[15] Another ground of appeal under the DESD Act is that the General Division failed to

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<sup>4</sup> General Division decision at para. 20

<sup>5</sup> *Ibid.* at para. 17

<sup>6</sup> *Ibid.* at para. 20

<sup>7</sup> The written record before the Appeal Division contains documents coded AD1 to AD20

observe a principle of natural justice. These principles are concerned with ensuring that parties to an appeal have the opportunity to present their case to the Tribunal, to know and answer the other party's legal case and to have a decision made by an impartial decision maker based on the law and the facts.

[16] The General Division initially set a teleconference hearing for this appeal. However, after receiving the Notice of Hearing, the Claimant sent an email to the Tribunal that stated that his heart rate and blood pressure were going up due to stress and that "my evidence is clear that will speak for itself". Therefore, the General Division cancelled the oral hearing and decided the matter based on the documents filed with the Tribunal.

[17] The Claimant now complains that a new hearing date was not set. However, the *Social Security Tribunal Regulations* provide that the General Division may conclude appeals based on the written documents or hold a hearing. Whether to hold an oral hearing is a discretionary decision to be made by the Tribunal Member. Nothing suggests that the General Division member inappropriately exercised her discretion in this regard, or that the Claimant was unable to present his case or answer the Minister's legal case. Therefore, the appeal does not have a reasonable chance of success on the basis that the General Division breached a principle of natural justice when it made its decision without holding an oral hearing in this case.

#### **Issue 4: Breach of rights**

[18] The Claimant also claims that his rights have been violated under sections 6 (mobility rights), 11(b) (right to be tried in a reasonable time), 7 (life, liberty and security) and other sections of the Charter and section 1 of the *Canadian Bill of Rights* (life, liberty, security of the person, etc.).

[19] He did not raise these issues at the General Division. The Federal Court considered a case where the claimant wanted to raise a Charter issue before the Tribunal's Appeal Division when it had been dismissed by the General Division because the claimant had not filed an adequate Charter record. In that case, the Court concluded that the Tribunal's Appeal Division correctly dismissed the Charter claim because it had not first been decided by the Tribunal's General

Division.<sup>8</sup> Similarly, in this case, it is inappropriate for the Appeal Division to consider the Claimant's Charter and *Canadian Bill of Rights* claims when they were not first raised at the General Division. The General Division's mandate is to hear the parties' evidence on all issues, weigh it and make a decision based on the facts and the law. The Appeal Division's mandate is to determine whether the General Division made an error under the *DESD Act* when it did so. The Appeal Division cannot decide whether the General Division erred on an issue that was not presented to it.

[20] In addition, apart from bald statements that these rights were violated, the Claimant does not explain specifically how any such rights were violated, does not refer to any specific section of the *Old Age Security Act*, the *DESD Act*, any other statute or regulation that is brought into question, and provides no evidence to support these claims.

[21] The Tribunal wrote to the Claimant on August 28, 2019, and asked that he tell the Tribunal what sections of the legislation he says contravene the Charter, what rights or freedoms have been infringed and how, what remedy he is seeking as a result of the infringement, and to provide legal support for his arguments. The Claimant provided none of this information. A simple allegation of a Charter breach is insufficient for it to be adjudicated.<sup>9</sup> Without any of this additional information, these claims must be dismissed.

[22] Finally, in this regard, the Claimant has not filed any information as required under the *Social Security Tribunal Regulations*<sup>10</sup> for a constitutional question to be heard. He has also refused to serve notice to any of the Attorneys General of Canada or the provinces of the constitutional questions. This is required so that the Minister can know and properly respond to the legal issues. In addition, the Attorneys General of Canada or the provinces may wish to become involved and so providing them with notice of a Charter claim is necessary. The Claimant's refusal to provide this notice is also reason to dismiss these claims.

[23] Therefore, leave to appeal cannot be granted on the basis of the Claimant's claims under the Charter or the *Canadian Bill of Rights*.

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<sup>8</sup>*Papouchine v. Canada (Attorney General)*, 2018 FC 1138

<sup>9</sup>*Langlois v Attorney General of Canada*, 2018 FC 1108

<sup>10</sup>*Social Security Tribunal Regulations* s. 20(1)

**CONCLUSION**

[24] Leave to appeal is refused for these reasons.

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVES:	S. B., Self-represented Applicant  Tiffany Glover, Counsel for the Respondent
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