



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. B. v Minister of Employment and Social Development*, 2019 SST 1405

Tribunal File Number: AD-19-841

BETWEEN:

R. B.

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: December 12, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] R. B. (Claimant) was born in Iraq. He came to Canada in July 1990. He now lives in the United States. The Claimant applied for an Old Age Security pension (OAS). The Minister of Employment and Social Development 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 in the United States.

[3] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division held a hearing and dismissed the appeal. It also decided that the Claimant had not resided in Canada for long enough to receive OAS while living in the United States. Leave to appeal the General Division 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 was biased.

GROUND OF APPEAL

[4] 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. Instead, I must decide whether the General Division:

- a) Failed to provide a fair process;
- b) Failed to decide an issue that it should have, or decided an issue that it should not have;
- c) Made an error in law; or
- d) Based its decision on an important factual error. This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

[5] However, before I can decide an appeal, I must decide whether to grant leave (permission) to appeal. The DESD Act says that leave to appeal must be refused if the appeal does not have a reasonable chance of success. Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal (reason for appealing) that falls under the DESD Act and on which the appeal has a reasonable chance of success.

ISSUE

[6] Does the appeal have a reasonable chance of success because the General Division failed to provide a fair process since the General Division member was biased?

ANALYSIS

[7] One ground of appeal that I can consider is whether the General Division failed to provide a fair process for this appeal. The Claimant says that it did so because the General Division member was biased and had pre-judged the appeal. For the reasons set out below, the appeal does not have a reasonable chance of success on this basis.

[8] The Claimant says that the General Division failed to seriously consider his documents. However, the decision contains a summary of the Claimant's position and the documents that support it.¹ The General Division weighed this evidence as well as evidence that did not support the Claimant's legal position to make its decision. The appeal has no reasonable chance of success on this basis.

[9] The Claimant also argues that the General Division failed to understand that passports are not always stamped when people enter Canada. However, the General Division decision did not turn on this. The decision states that it is hard to establish when the Claimant entered and left Canada, and that a copy of all of his passports or a report from the Canadian border services agency would be helpful.² The General Division tried to establish exactly when the Claimant entered and exited Canada but could not do so because the evidence was not complete. The appeal does not have a reasonable chance of success on this basis.

¹ General Division decision at paras. 11-17

² Ibid. at para. 10

[10] 17 of the decision. This paragraph states

[11] There is some documentary evidence to support this version of events. For example, the Canada In addition, the Claimant argues that the General Division contradicts itself in paragraph Revenue Agency (“CRA”) sent the Claimant’s documents to the Windsor House in 2010 and 2011. The CRA also sent a document to the Mississauga Apartment in 2012. The Claimant filed documents with the CRA that appear to show ongoing X operations from 2009 through 2011, albeit with an outdated address. If I fully accept this version of events as true, I could find that the Claimant resided in Canada until the end of 2011. However, there is also evidence to support much closer ties with the U.S. during the same period [footnotes omitted].

[12] This paragraph is not contradictory. It states that there was evidence that supports the Claimant’s legal position and outlines what it is. Also, there was evidence that did not support the Claimant’s position. This argument does not point to any failure to provide a fair process. Leave to appeal cannot be granted on this basis.

[13] Finally, the Claimant argues that the decision was predetermined because the opposing party (the Minister) did not attend the hearing. It is common for the Minister to not attend General Division hearings but to rely on their written submissions. In addition, the Tribunal cannot compel any party to attend a hearing. It is for each party to decide whether to attend. This argument does not point to any failure to provide a fair process.

[14] I have read the General Division decision and reviewed the documents filed with the Tribunal. The General Division did not overlook or misconstrue any important information.

[15] There is no suggestion that the General Division made an error in law.

CONCLUSION

[16] Leave to appeal is therefore refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	R. B., Self-represented
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