



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *G. K. v Minister of Employment and Social Development*, 2020 SST 364

Tribunal File Number: AD-20-590

BETWEEN:

**G. K.**

Applicant  
(Claimant)

and

**Minister of Employment and Social Development**

Respondent  
(Minister)

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Neil Nawaz

Date of Decision: April 24, 2020

## DECISION AND REASONS

### DECISION

[1] Leave to appeal is refused.

### OVERVIEW

[2] The Claimant is a 79-year-old native of Cyprus who lived in Canada from 1965 to 1985. He began receiving a partial Old Age Security pension in 2005. In February 2016, the Claimant travelled to Canada and applied for the Guaranteed Income Supplement (GIS). The Minister refused the application because it determined that the Claimant had not re-established residency in Canada.

[3] In April 2017, the Claimant submitted a second GIS application.<sup>1</sup> This time, the Minister granted the Claimant the GIS, effective the month of application, because it was satisfied that he had re-established Canadian residency as of that date.

[4] The Claimant appealed the Minister's determination of the GIS start date to the General Division of the Social Security Tribunal. He argued that the benefit should have been paid retroactive to February 2016. He also disputed the amount of his monthly payment.

[5] In May 2019, the General Division dismissed the appeal. The General Division determined that the Claimant was not eligible for the GIS between February 2016 and April 2017 because he was residing in the United States, and not Canada, during that period. The General Division also determined that the amount of the Claimant's GIS monthly benefit was correct.

[6] The Claimant appealed the General Division's decision to the Appeal Division. The Appeal Division allowed the appeal, finding that the General Division applied the wrong legal test when it decided the Claimant's residence. The Appeal Division referred the matter back to the General Division for reconsideration.

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<sup>1</sup> GD2-6.

[7] In January 2020, another member of the General Division considered the Claimant's appeal. By this time, the Claimant was no longer challenging his GIS amount, although he continued to insist that he was entitled to over a year of retroactive benefits. In a decision dated February 14, 2020, the General Division dismissed the appeal, finding insufficient evidence that the Claimant had resided in Canada, for the purpose of qualifying for the GIS, earlier than April 2017.

[8] On March 19, 2020, the Claimant sent an email to the Tribunal indicating his intention to appeal the General Division's most recent decision. The Tribunal responded with instructions on how to apply for leave to appeal to the Appeal Division. It also asked him to provide his reasons for appealing, and it described the four grounds of appeal that the Appeal Division is permitted to consider.

[9] The Claimant replied on April 3, 2020. He asked the Appeal Division to take his appeal seriously, adding: "The reasons for my new appeal are, the first 3 paragraphs. The fourth one has no connection with my case."<sup>2</sup>

[10] I have reviewed the General Division's decision against the record. I have concluded that the Claimant has not raised any arguments that will have a reasonable chance of success on appeal.

## **ISSUE**

[11] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division (i) did not follow procedural fairness; (ii) made an error of jurisdiction; (iii) made an error of law; or (iv) made an important error of fact.<sup>3</sup>

[12] An appeal can proceed only if the Appeal Division first grants leave to appeal.<sup>4</sup> At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.<sup>5</sup>

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<sup>2</sup> ADN1A.

<sup>3</sup> Section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

<sup>4</sup> DESDA, sections 56(1) and 58(3).

<sup>5</sup> DESDA, section 58(2).

This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.<sup>6</sup>

[13] I had to decide whether the Claimant raised an arguable case that fell under one or more of the permitted grounds of appeal.

## **ANALYSIS**

[14] To succeed at the Appeal Division, a claimant must do more than simply disagree with the General Division's decision. A claimant must also identify specific errors that the General Division committed in coming to its decision and explain how those errors, if any, fit into the one or more of the four grounds of appeal permitted under the law.

[15] In my review of the record, I did not see an arguable case that the General Division committed an appealable error.

[16] At the General Division, the Claimant insisted that he had been a resident of Canada since February 2016, when he drove from Florida to Toronto with several suitcases of personal possessions. He testified that he had no friends or relatives in Toronto. He rented a room, opened a bank account, and applied for the GIS and Quebec Pension Plan retirement pension. However, he was told that it would take 35 weeks to process his GIS application so, lacking funds, he returned to Florida to live with his son until his GIS application was approved.

[17] The General Division examined the record and determined that, while the Claimant intended to live in Canada and had established *some* residential ties to this country as of February 2016, they were not enough to establish residency. The General Division noted that a person's intention to live in Canada does not determine the issue. It found that the Claimant only spent two weeks in Canada from February 2016 to March 2017. It observed that the Claimant was issued a Florida driver's license in March 2016. It confirmed that, except for February 2016, the Claimant did not pay any rent in Canada until April 2017. It determined that the Claimant was not issued an Ontario health card until July 2017.

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<sup>6</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[18] My review of the decision indicates that the General Division analyzed the Claimant's submissions in detail—including his argument that, as a Canadian citizen, he was automatically entitled to benefits for up to six months after leaving Canada—but concluded that the Minister had approved his GIS in compliance with the law. The General Division considered the available evidence in light of the factors that typically indicate residence<sup>7</sup> and came to the defensible conclusion that the Claimant was not a resident of Canada between February 2016 and April 2017. I see no indication that the General Division misunderstood the facts, misapplied the law, or otherwise gave inadequate consideration to the material before it.

### CONCLUSION

[19] The Claimant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, the application for leave to appeal is refused.



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Member, Appeal Division

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| REPRESENTATIVE: | G. K., self-represented |
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<sup>7</sup> See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76.