



Citation: *SS v Minister of Employment and Social Development*, 2021 SST 400

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** S. S.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** General Division decision dated December 4, 2020  
GP-19-1566

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**Tribunal member:** Kate Sellar

**Decision date:** August 5, 2021

**File number:** AD-21-111

## Decision

[1] I am refusing leave (permission) to appeal. The appeal will not go ahead. These reasons explain why.

## Overview

[2] S. S. (Claimant) was born in India in 1940. He lived most of his life in Pakistan before moving to Canada in November 2008. Because of his job, he also spent periods of time in Germany, France, and Hong Kong between 1975 and 1987.

[3] In January 2018, the Claimant applied for a pension under the *Old Age Security Act* (OAS Act). The Minister approved his application. The Claimant was going to receive a partial pension of 10/40ths of the full pension amount, based on 10 years of residence in Canada by November 2018. Payment would start in December 2018.

[4] On reconsideration, the Minister changed the size of the pension and the start date. The Claimant's partial pension was then 8/40ths, payable as of May 2017.

[5] The Claimant appealed to the Social Security Tribunal's General Division. It decided that, actually, the Claimant was entitled to a partial pension of 7/40ths, payable as of February 2017.

[6] The Claimant asks for leave to appeal the General Division decision. I must decide whether it is arguable that the General Division made an error under the *Department of Employment and Social Development Act* (DESD Act) that would justify granting the Claimant leave to appeal.

[7] I find it is not arguable that the General Division made an error. The appeal will not go to the next step in the process.

## Issues

[8] The issues are the following:

- a) Is it arguable that the General Division made an error of law about the rules for receiving only a partial OAS pension?
- b) Is it arguable that the General Division made an error of law about the rules for calculating the Claimant's partial OAS pension?
- c) Is it arguable that the General Division made an error of fact that had an impact on the start date or amount of the Claimant's partial OAS pension?

## Analysis

### Reviewing General Division decisions

[9] The Appeal Division does not provide an opportunity for the parties to re-argue their case in full. Instead, I reviewed the Claimant's arguments and the General Division's decision to decide whether the General Division may have made any errors.

[10] That review is based on the wording of the DESD Act, which sets out the "grounds of appeal." The grounds of appeal are the reasons for the appeal. To grant leave to appeal, I must find that it is arguable that the General Division made at least one of the following errors:

- It acted unfairly.
- It failed to decide an issue that it should have, or decided an issue that it should not have.
- It based its decision on an important error regarding the facts in the file.
- It misinterpreted or misapplied the law.<sup>1</sup>

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<sup>1</sup> See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[11] At the leave to appeal stage, a claimant must show that the appeal has a reasonable chance of success.<sup>2</sup> To do this, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.<sup>3</sup>

### **Not arguable that the General Division made an error of law about the rules for receiving only a partial OAS pension**

[12] The General Division did not misinterpret or misapply the law when it comes to whether the Claimant is entitled to a full OAS pension.

[13] The Claimant argues that he is entitled to a full OAS pension.

[14] The General Division explained that, to receive a full OAS pension, a person usually has to reside in Canada for at least 40 years from age 18 until the time the application is approved.<sup>4</sup> The Claimant did not meet that requirement, because he did not start to reside in Canada until 2008.

[15] The General Division also explained that a person who has not resided in Canada for 40 years can still qualify for a full pension if they meet other requirements. But, they have to meet **all** the other requirements.<sup>5</sup> The Claimant met the first requirement because he turned 25 by July 1, 1977. But, he did not meet the next requirement, because he did not reside in Canada or have a valid immigration visa on or before July 1, 1977.<sup>6</sup>

[16] In my view, it is not arguable that the General Division made an error of law about the requirements for a full OAS pension. The General Division followed the rules about how a person qualifies for the full OAS pension. When the General Division applied those rules to the Claimant's situation, he did not qualify for a full OAS pension.

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<sup>2</sup> See section 58(2) of the DESD Act.

<sup>3</sup> The Federal Court of Appeal discussed this in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>4</sup> See the General Division decision at paragraph 8, relying on section 3(1)(b) of the *Old Age Security Act* (OAS Act).

<sup>5</sup> See the General Division decision at paragraph 9, relying on the Federal Court of Canada decision in *Flitcroft v Canada (Attorney General)*, 2012 FC 782.

<sup>6</sup> See the General Division decision at paragraph 9.

## **Not arguable that the General Division made an error of law about the rules for calculating the Claimant's partial OAS pension**

[17] The General Division calculated the Claimant's partial pension as 7/40ths payable as of February 2017. It is not arguable that the General Division misinterpreted or misapplied the law when it reached this conclusion.

[18] The Claimant argues that the General Division did not calculate his partial OAS pension correctly.

[19] The General Division took a step-by-step approach to explaining which rules it had applied to reach the conclusion. These are the rules the General Division applied:

- A person can have a partial pension if they live in Canada when the Minister approves the pension and they have 10 years of residence here.<sup>7</sup>
- Canada has agreements with other countries that allow a person's residence outside Canada to count toward those 10 years of residence. These agreements do not count toward meeting the 40-year requirement to receive a full OAS pension.<sup>8</sup>
- Canada has agreements with France, Germany, and India. It does not have agreements like that with any of the other countries that the Claimant resided in (Hong Kong and Pakistan).<sup>9</sup>
- A person resides somewhere if they make their home and ordinarily live in that place.<sup>10</sup>

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<sup>7</sup> See the General Division decision at paragraph 10, relying on section 3(2) of the OAS Act.

<sup>8</sup> See the General Division decision at paragraph 11, noting that the agreements are authorized by section 40 of the OAS Act.

<sup>9</sup> Note: Residence in India does help the Claimant because he lived there before he turned 18. See the General Division decision at paragraphs 13 to 15.

<sup>10</sup> See the General Division decision at paragraph 18, relying on section 21(1)(a) of the *Old Age Security Regulations* and Article 14(a) of the *Agreement Between the Government of Canada and the Government of the Federal Republic of Germany on Social Security* as amended by the *Supplementary Agreement* of December 2003.

- The pension starts the first month after the pension is approved.<sup>11</sup>
- There are four possible dates to select from when deciding which day the pension is approved. In every case, whichever date is the latest on the list of four options is the correct date that the pension is approved. In this case, the latest date on the list for the Claimant is one year before the day the application was received (January 29, 2017).<sup>12</sup>

[20] In my view, it is not arguable that the General Division made an error of law about the partial OAS pension. The rules are as the General Division set them out above. The General Division needed to (and did) follow the rules in the OAS Act and Regulations to approve the Claimant's partial OAS pension.

**Not arguable that the General Division made an error of fact that had an impact on the start date or amount of the Claimant's partial OAS pension**

[21] There is no argument here that the General Division made an error of fact. The General Division had to decide when the Claimant resided in which countries. The General Division needed to (and did) pay attention to the available evidence and make findings consistent with that evidence. The findings about the Claimant's residence led the General Division to its conclusions about the size of the Claimant's OAS pension and when it would start.

[22] The General Division made the following findings:

- The Claimant did not make his home and ordinarily live in Germany. He did some training for work there from August 1975 to January 1976, and his family did not join him.<sup>13</sup>
- The Claimant started residing in France on July 30, 1976.<sup>14</sup>

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<sup>11</sup> See the General Division decision at paragraph 33, relying on section 8(1) of the OAS Act.

<sup>12</sup> See the General Division decision at paragraphs 35 and 36.

<sup>13</sup> See the General Division decision at paragraphs 16 to 19.

<sup>14</sup> See the General Division decision at paragraphs 21 to 25.

- The Claimant stopped residing in France on June 30, 1979.<sup>15</sup>
- The Claimant moved to Canada on November 30, 2008, and had already had 2 years and 336 days of residence (because of his time in France). So, he needed another 7 years and 29 days to qualify for a partial OAS pension.<sup>16</sup>
- Seven years and 29 days after November 30, 2008, is December 28, 2015.<sup>17</sup>

[23] The General Division also made the following findings:

- One year before the day the application was received was January 29, 2017.<sup>18</sup>
- The day the Claimant turned 65 was June 25, 2005.<sup>19</sup>
- The day the Claimant qualified for the OAS pension was December 28, 2015, when he met the 10-year residence requirement by adding together his residence in France and his actual residence in Canada.<sup>20</sup>
- The month immediately before the date the Claimant specified in writing was November 2015, because he asked for the pension to be payable as soon as he qualified.<sup>21</sup>

[24] For there to be an error of fact, the General Division needs to base its decision on the incorrect fact. This means that the fact the General Division got wrong needs to be important: it needs to have an impact on the outcome of the case. The finding needs to result from either ignoring the evidence or making a finding that is “perverse or

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<sup>15</sup> See the General Division decision at paragraphs 26 to 28.

<sup>16</sup> See the General Division decision at paragraph 30.

<sup>17</sup> See the General Division decision at paragraph 35.

<sup>18</sup> See the General Division decision at paragraph 35.

<sup>19</sup> See the General Division decision at paragraph 35.

<sup>20</sup> See the General Division decision at paragraph 30.

<sup>21</sup> See the General Division decision at paragraphs 30 and 31.

capricious,” which means not consistent with steady judgment or not supported by the evidence.<sup>22</sup>

[25] The Claimant argues that he and his wife resided in France for “more than three years.” However, the Claimant did not provide any more detailed information about when he and his wife resided in France.

[26] The General Division based its decision about where the Claimant resided and when on the evidence available in the record, including the letter of transfer from his employer, passport stamps, visa information, identity cards, and the Claimant’s answers to the Tribunal’s written questions.<sup>23</sup>

[27] I have reviewed the documents that the General Division had when it made the decision. The documents do not support an argument that the General Division got it wrong when it found that the Claimant lived in France from July 30, 1976, to June 30, 1979. That finding is consistent with the evidence and was the General Division’s finding to make.

[28] Even if I am incorrect about this, and the Claimant did live in France longer, this would not change the outcome for him. The time he spent in France changes only the date by which he reached the 10-year requirement for a partial pension. If he lived in France for more than three years, his pension would still start on the latest day on the list of four options, which would still be the year before the day the application was received (January 29, 2017).

[29] I have reviewed the documents in this case.<sup>24</sup> I am satisfied that the General Division did not ignore or misunderstand the evidence in any important way.

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<sup>22</sup> The DESD Act describes errors of fact in section 58(1)(c). The Federal Court talked about what the requirements are for an error of fact in these cases: *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) at paragraphs 16 and 17; and *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319 at paragraph 39.

<sup>23</sup> See the General Division decision at paragraphs 21 to 28.

<sup>24</sup> See *Karadeolian v Canada (Attorney General)*, 2016 FC 615.



[30] There was one mistake in the General Division decision. It stated that the Claimant's employer letter was dated April 20, 1976.<sup>25</sup> However, the letter was actually dated April 24, 1976.<sup>26</sup> This has no impact on the outcome of the decision. So, while it is a mistake, it cannot be an error of fact I could rely on to grant leave to appeal.

[31] I am satisfied that the Claimant had a fair opportunity to provide the relevant information and make his arguments about his eligibility for the OAS pension. The outcome is not what the Claimant had hoped for, but it is not arguable that the General Division made an error. Applying the OAS Act results in a 7/40ths pension for the Claimant effective February 2017.

## **Conclusion**

[32] I am refusing leave to appeal. It is not arguable that the General Division made an error. This means that the appeal will not go ahead.

Kate Sellar  
Member, Appeal Division

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<sup>25</sup> See the General Division decision at paragraph 24.

<sup>26</sup> See GD25-15.