



Citation: *RS v Minister of Employment and Social Development*, 2021 SST 401

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. S.
Representative: S. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated December 4, 2020
GP-19-1568

Tribunal member: Kate Sellar

Decision date: August 5, 2021

File number: AD-21-112

Decision

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

Overview

[2] R. S. (Claimant) was born in India in 1946. She lived most of her life in Pakistan before moving to Canada in November 2008. Because of her husband's job, she also lived in France and Hong Kong for periods 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 her 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 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.¹

¹ 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.² To do this, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.³

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 she 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.⁴ The Claimant did not meet that requirement, because she 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.⁵ The Claimant met the first requirement because she turned 25 by July 1, 1977. But, she did not meet the next requirement, because she did not reside in Canada or have a valid immigration visa on or before July 1, 1977.⁶

[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

² See section 58(2) of the DESD Act.

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

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

⁵ 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.

⁶ See the General Division decision at paragraph 9.

applied those rules to the Claimant's situation, she did not qualify for a full OAS pension.

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 her 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.⁷
- 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.⁸
- 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).⁹

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

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

⁹ Note: Residence in India does help the Claimant because she lived there long before she turned 18 (she has not lived in India since she was a year old—see GD2-5). See the General Division decision at paragraphs 13 to 15.

- An agreement between Canada and Germany says that a period of residence in Germany is considered a period of residence in Canada for OAS purposes.¹⁰
- The pension starts the first month after the pension is approved.¹¹
- 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).¹²

[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.

¹⁰ See the General Division decision at paragraph 17, 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*.

¹¹ See the General Division decision at paragraph 31, relying on section 8(1) of the OAS Act.

¹² See the General Division decision at paragraphs 35 and 36.

[22] The General Division made the following findings:

- The Claimant never resided in Germany. She stayed in Pakistan while her husband went to Germany for training between August 1975 and January 1976. The Claimant could not claim residence in Germany herself or because of her husband's training there.¹³
- The Claimant started residing in France on July 30, 1976.¹⁴
- The Claimant stopped residing in France on June 30, 1979.¹⁵
- The Claimant moved to Canada on November 30, 2008, and had already had 2 years and 336 days of residence (because of her time in France). So, she needed another 7 years and 29 days to qualify for a partial OAS pension.¹⁶
- Seven years and 29 days after November 30, 2008, is December 28, 2015.¹⁷

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

- One year before the day the application was received was January 29, 2017.¹⁸
- The day the Claimant turned 65 was April 25, 2011.¹⁹
- The day the Claimant qualified for the OAS pension was December 28, 2015, when she met the 10-year residence requirement by adding together her residence in France and her actual residence in Canada.²⁰

¹³ See the General Division decision at paragraphs 16 to 18.

¹⁴ See the General Division decision at paragraphs 20 to 23.

¹⁵ See the General Division decision at paragraphs 24 to 26.

¹⁶ See the General Division decision at paragraph 28.

¹⁷ See the General Division decision at paragraph 33.

¹⁸ See the General Division decision at paragraph 33.

¹⁹ See the General Division decision at paragraph 33.

²⁰ See the General Division decision at paragraph 33.

- The month immediately before the date the Claimant specified in writing was December 2015, because she asked for the pension to be payable as soon as she qualified.²¹

[24] For there to be an error of fact, the General Division needs to base its decision on the finding. This means that the fact the General Division got wrong 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 capricious,” which means not consistent with steady judgment or not supported by the evidence.²²

[25] The Claimant argues that she and her husband resided in France for “more than three years.” However, the Claimant did not provide any more detailed information about when she and her husband 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 her husband’s employer, passport stamps, visa information, identity cards, and the Claimant’s answers to the Tribunal’s written questions.²³

[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 her. The time she spent in France changes only the date by which she reached the 10-year requirement for a partial pension. If she lived in France for more than three years, her pension would still start on the latest day on the

²¹ See the General Division decision at paragraph 28.

²² 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.

²³ See the General Division decision at paragraphs 20 to 26.

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.²⁴ I am satisfied that the General Division did not ignore or misunderstand the evidence in any important way.

[30] There was one mistake in the General Division decision. It stated that the employer letter of the Claimant's husband was dated April 20, 1976.²⁵ However, the letter was actually dated April 24, 1976.²⁶ 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 her arguments about her 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

²⁴ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

²⁵ See the General Division decision at paragraph 24.

²⁶ See GD25-15.