



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *EA v Minister of Employment and Social Development*, 2018 SST 1437

Tribunal File Number: GP-18-2364

BETWEEN:

**E. A.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Antoinette Cardillo

DATE OF DECISION: December 12, 2018

## **DECISION**

I find that the evidence does not establish a new material fact within the meaning of section 66(1)(b) of the *Department of Employment and Social Development Act* (Act).

## **OVERVIEW**

[1] This application involves a request to rescind or amend a decision of the General Division of the Social Security Tribunal. On July 31, 2018, the General Division found that the Applicant did not meet the conditions of section 3(1)(b) of the *Old Age Security Act* (OAS Act) for a full pension because he was not residing in Canada on July 1, 1977 (his arrival date was in 1991), and he also did not meet the conditions of sections 3(1)(a) and (c) because he was not a pensioner on July 1, 1977, and he had not resided in Canada for at least 40 years before the day his application was approved. On October 17, 2018, the Applicant filed an application with the General Division to rescind or amend that decision under section 66(1)(b) of the Act (application to rescind or amend).

## **ISSUES**

[2] I must determine whether the evidence submitted in support of the application to rescind or amend establishes a new material fact within the meaning of section 66(1)(b) of the Act.

[3] If I find that there is a new material fact within the meaning of section 66(1)(b) of the Act, I must then decide whether the Applicant is entitled to a full pension under the OAS Act.

## **APPLICABLE LAW**

[4] The law<sup>1</sup> states that the Tribunal may rescind or amend a decision it gave in respect of any particular application if new facts are presented to the Tribunal or the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact; if new facts are presented to the Tribunal or the Tribunal is satisfied that the

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<sup>1</sup> Section 66(1) of the Act.

decision was made without knowledge of, or was based on a mistake as to, some material fact [sic].

## **DOCUMENT SUBMITTED AS NEW FACTS**

[5] In support of the application to rescind or amend, the Applicant submitted a letter on October 17, 2018, stating that, under section 15 (right to equality) of the *Canadian Charter of Rights and Freedoms* (Charter), he has the right to the equal protection and equal benefit that the law confers on all Canadians and that the criterion of having 40 years of residence in Canada after the age of 18 for a full pension is contrary to the Charter. He adds that this criterion is unfounded and creates the largest difference and social insecurity among retirees. The Applicant finds that his appeal has merit and that he is entitled to a full pension effective October 2016.

## **ANALYSIS**

### **Application to Rescind or Amend – Discoverability and Materiality**

[6] The Applicant must prove, on a balance of probabilities, that the evidence filed in support of his application to rescind or amend establishes a new material fact within the meaning of section 66(1)(b) of the Act.

[7] Before section 66(1)(b) of the Act came into force in April 2013, the Federal Court of Appeal (FCA) set out the test for evidence to be admissible as a “new fact”:

the evidence must establish a fact (usually a medical condition in the context of the CPP) that existed at the time of the original hearing but was not discoverable before the original hearing by the exercise of due diligence (the “discoverability test”); and

the evidence must reasonably be expected to affect the result of the prior hearing (the “materiality test”).

*(Canada (Attorney General) v MacRae, 2008 FCA 82)*

[8] In addition, in *Carepa v Canada (Minister of Social Development)*, 2006 FC 1319, the Federal Court found that an applicant must provide evidence of what steps were taken to

discover the new evidence and explain why this new evidence was not submitted at the original hearing.

[9] As mentioned, the Applicant submitted a letter explaining that he is entitled to a full Old Age Security pension effective October 2016 and that the criterion of having 40 years of residence in Canada after the age of 18 is contrary to the Charter.

[10] The Applicant had raised the same Charter arguments before, when he filed his appeal with the Tribunal. At a pre-hearing teleconference on June 5, 2018, the Applicant said that he did not intend to pursue the Charter arguments but that he wanted to make sure that he was treated like any other Canadian. The Tribunal considered all the evidence to determine whether the Applicant was eligible for a full pension under section 3(1) of the OAS Act and, unfortunately, the Applicant did not meet the criteria for a full pension.

[11] The letter<sup>2</sup> submitted on October 17, 2018, with the application to rescind or amend, does not establish a new material fact that could not have been discovered at the time of the hearing with the exercise of reasonable diligence within the meaning of section 66(1)(b) of the Act.

## **CONCLUSION**

[12] For these reasons, the application to rescind or amend is dismissed.

Antoinette Cardillo  
Member, General Division – Income Security

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<sup>2</sup> RA1-3.