



Citation: *MN v Minister of Employment and Social Development*, 2022 SST 860

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. N.
Representative: A. N.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated May 20, 2022
(GP-21-2057)

Tribunal member: Neil Nawaz

Decision date: September 1, 2022

File number: AD-22-469

Decision

[1] Permission to appeal is refused. This appeal will not be going forward.

Overview

[2] The Claimant was born in Iran in 1943. He first entered Canada in March 2018 and applied for an Old Age Security (OAS) pension the following month. Service Canada initially refused the application because the Claimant had not resided in Canada for at least 10 years. It then determined that the Claimant had previously lived and worked in the United States for several years. Based on this information, Service Canada granted the Claimant a partial OAS pension at a rate of 1/40th of the full amount.¹

[3] The Claimant thought that he was entitled to a pension at 13/40^{ths} of the full amount.² The Minister refused to reconsider its decision, and the Claimant appealed that refusal to the Social Security Tribunal. The Tribunal's General Division held a hearing by teleconference and dismissed the appeal. It found that Service Canada had assessed the Claimant's pension amount in compliance with the law. It also decided that it was too late for the Claimant to cancel the pension because more than six months had passed since approval.

[4] The Claimant is now asking for permission to appeal the General Division's decision. He alleges that the General Division made an error when it found that his reconsideration request was not, in effect, a demand to cancel his pension.

Issue

[5] There are four grounds of appeal to the Appeal Division. An applicant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;

¹ See Minister's approval letter dated January 18, 2021, GD2-6.

² See Claimant's letter dated February 5, 2021 requesting reconsideration from Service Canada, GD2-5.

- interpreted the law incorrectly; or
- based its decision on an important error of fact.³

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.⁴ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁵ This is a fairly easy test to meet, and it means that a Applicant must present at least one arguable case.⁶

[6] I have to decide whether the Claimant has an arguable case.

Analysis

[7] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Claimant does not have an arguable case.

[8] Service Canada refused the Claimant a higher OAS pension amount for the following reasons:

- The Claimant had lived in Canada for only one year and three months when his OAS pension application was approved;
- The Claimant had previously lived and worked in the United States for eight years and nine months;
- The Social Security Agreement between Canada and the United States (Agreement) did not allow the Claimant's years of American work and residence to be used in the calculation of his OAS pension amount; and
- The Agreement only allowed those years to be deemed a period of Canadian residence for the purpose of accumulating the minimum 10 years required to receive **any** amount of an OAS pension.

³ See *Department of Employment and Social Development Act* (DESDA), section 58(1).

⁴ See DESDA, sections 56(1) and 58(3).

⁵ See DESDA, section 58(2).

⁶ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[9] The General Division implicitly endorsed Service Canada's assessment of the Claimant's eligibility for the OAS pension and its calculation of the amount. The General Division went on to find the following:

- The Claimant's request for reconsideration did not amount to a request to cancel his OAS pension;
- The Claimant's apparent intention was to obtain a larger pension payment, not to make the pension stop altogether;
- The six-month deadline for the Claimant to cancel his pension had since elapsed;⁷ and
- The General Division had no jurisdiction to override the letter of the law and impose a "fair" solution.

[10] I don't see how the General Division made any factual or legal errors in making these findings. The Claimant argues that it was illogical to think that his request for reconsideration could have been anything other than a request for cancellation since the amount he was granted (1/40th of the full pension) was so small. However, I see no reason to intervene here.

[11] One of the General Division's roles is to establish facts. In doing so, it is entitled to some leeway in how it chooses to weigh the evidence.⁸ In this case, the General Division reviewed the Claimant's reconsideration request letter and the circumstances under which it was sent. It concluded that the letter could not be considered a request to cancel the pension, however paltry that pension might be. I see no reason to second-guess the General Division's conclusion, which it reached after what strikes me as a careful assessment of the evidence and applicable law.

⁷ See section 9.3(1) of the *Old Age Security Act* and section 26(1) of the *Old Age Security Regulations*.

⁸ See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

Conclusion

[12] The Claimant has not identified any grounds of appeal that have a reasonable chance of success.

[13] Permission to appeal is therefore refused.



Member, Appeal Division