



Citation: *AP v Minister of Employment and Social Development*, 2022 SST 1133

Social Security Tribunal of Canada Appeal Division

Decision

Appellant (Claimant):
Representative:

A. P.
S. P.

Respondent:
Representative:

Minister of Employment and Social Development
Viola Herbert

Decision under appeal:

General Division decision dated August 2, 2022
(AD-22-415)

Tribunal member:

Kate Sellar

Type of hearing:

On the Record

Decision date:

October 27, 2022

File number:

AD-22-661

Decision

[1] I am dismissing the Claimant's request to cancel or change (rescind or amend) the Appeal Division decision. These reasons explain why.

Overview

[2] A. P. (Claimant) lives in Serbia. In August 2018, she applied for an Old Age Security (OAS) pension. She said that she lived in Canada from April 1999 to July 2006. The Minister approved her application and granted her a partial pension at 7/40ths of the full rate. The Minister also decided, under the terms of the Social Security Agreement between Canada and Serbia, that the Claimant was eligible to receive an OAS pension, even though she lived outside Canada.

[3] The Claimant appealed the Minister's reconsideration decision to this Tribunal. She argued that the Minister didn't consider some time that she resided and worked in Serbia. She also argued that the Minister should have counted two other times she lived in Canada -- three months in 1992 to 1993, and a month in the fall of 1995.

[4] The General Division dismissed the Claimant's appeal. The General Division decided that the agreement didn't help the Claimant increase her OAS pension amount. The General Division found that the Claimant's additional time in Canada were just visits, she wasn't "residing" in Canada at those times. The General Division also found that, even if they counted those visits as periods of residence, it still wouldn't have been enough to give her an eighth year of residence.

[5] On August 2, 2022, the Appeal Division refused the Claimant's request for permission to appeal the General Division's decision. The Appeal Division decided that the Claimant's appeal didn't have a reasonable chance of success. The Appeal Division found that there was **no arguable case** that the General Division:

- Based its decision on information inaccessible to the Claimant
- Made any error by deciding something that it didn't need to decide

- Failed to consider the Claimant's letter of appeal
- Assigned the appeal to a member lacking in legal knowledge
- Failed to consider the Claimant's work in Croatia

[6] On September 13, 2022, the Claimant filed an application to rescind or amend (cancel or change) the Appeal Division decision. I will refer to that application as the "new facts application."

[7] I am dismissing the Claimant's new facts application. The Claimant's evidence does not establish any new material fact that can form the basis for cancelling or changing the Appeal Division's decision.

Issue

[8] The issue in this appeal is:

- a) Has the Claimant provided new information (documents) that constitute new material facts that could not have been discovered by exercising due diligence at the time the Appeal Division made its decision refusing permission to appeal?

[9] The Claimant raised several other arguments about the General Division's decision in her new facts application. I won't discuss those arguments in any detail because they aren't part of what I need to decide.

[10] I need to decide whether the Claimant had any new facts that require a change to the Appeal Division's decision to refuse the Claimant permission to appeal the General Division's decision. The Claimant's arguments about:

- (i) eligibility for both GIS and OAS together from 2010 onwards, and
- (ii) the Claimant's eligibility for benefits as a widow,

are not issues that are properly part of this new facts application relating to the Appeal Division's permission to appeal decision.

Analysis

[11] In this decision, I will explain what a Claimant needs to prove to succeed in a new facts application. Then, I will explain why I'm dismissing the Claimant's new facts application.

New Facts Applications

[12] The law allows a party to ask the Appeal Division to rescind or amend its decision through a new facts application. In this case, the new fact that the Claimant raises needs to relate to the Appeal Division's decision. To allow the Claimant to change the Appeal Division's permission to appeal decision in this way, I must decide whether the Claimant has presented:

- a new fact (it could not have been discovered at the time the Appeal Division made its decision by being reasonably diligent).¹
- That is also "material" ("material" means that can be reasonably expected to affect the result of the earlier hearing).²

The Claimant's documents supporting the new facts application

[13] The Claimant relies on four documents in her new facts application. They are:

1. A document about the period that the Claimant worked in Croatia from Croatian pension insurance department.³
2. The Claimant's written answers to the questions the General Division asked her in her written hearing.⁴

¹ See section 66 of the *Department of Employment and Social Development Act* (Act).

² This case talks about what a material fact is *Canada (Attorney General) v Richard*, 2008 FCA 69.

³ See RA1B-27 to 36 and GD5-42 to 51.

⁴ See RA1B 22 to 26 and GD8-1 to 6.

3. Additional information about the Claimant's work in Croatia.⁵
4. A Geneva Convention document about pension rights.⁶

Applying the new facts test

[14] The Claimant already provided the first three documents in support of her appeal at the General Division. As a result, they cannot contain "new" information and I don't need to consider them further because they can't form the basis for a successful new facts application.⁷

[15] The fourth document is the Geneva Convention-related document. The Claimant did not explain how this document relates to the Appeal Division's decision about permission to appeal, so there is no basis to consider it as part of a new facts application of that Appeal Division decision.

[16] Regardless, the document relating to the Geneva Convention is dated June 4, 1952. The Claimant could have provided it earlier through reasonable diligence as it has existed for many years. The Claimant could have researched and accessed this document at any time in the preparation of her appeal. This document is new in the sense that it was not before the General Division, but was discoverable by the Claimant when the Appeal Division was making its decision on permission to appeal.

[17] The document relating to the Geneva Convention is not material. The Claimant did not make any arguments about how this document presents a new fact that would change the Appeal Division decision about permission to appeal.

[18] A new facts application is not a chance to argue the appeal for benefits all over again. It does not assist a claimant to clarify documents or testimony already in the record unless the evidence was not discoverable before the hearing and is material to the appeal.

⁵ See RAIB 37 to 46 and GD5-62 to 67 and 71 to 74.

⁶ See RAIB-47 to 55.

⁷ See paragraph 18 to 20 in *Andrews v Canada (Attorney General)*, 2018 FC 606.

[19] The new facts application does not provide a path to the Claimant for changing the Appeal Division's decision refusing permission to appeal. None of the material the Claimant provides is new (except for the Geneva Convention document, which was discoverable and is not material).

[20] The General Division decision applied the law and made findings of fact about the Claimant's residency in Croatia, Serbia, and Canada.⁸ The Appeal Division decided that the Claimant did not have any argument about an error by the General Division that had a reasonable chance of success.

[21] The Claimant's new facts application challenging the Appeal Division's decision is dismissed. The Claimant has no new facts, so there is no reason to cancel or change the Appeal Division's decision.

Conclusion

[22] I dismiss the Claimant's request to rescind or amend the Appeal Division's decision.

Kate Sellar
Member, Appeal Division

⁸ See especially paragraphs 21-26, 27 to 32, and 34-48 in the General Division decision respectively.