



Citation: *VC v Minister of Employment and Social Development*, 2023 SST 1172

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: V. C.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated February 28, 2023
(GP-22-993)

Tribunal member: Kate Sellar

Decision date: **August 28, 2023**

File number: AD-23-560

Decision

[1] I'm refusing the Claimant's request for leave (permission) to appeal. This appeal will not go ahead. These are the reasons for my decision.

Overview

[2] V. C. (Claimant) applied for an *Old Age Security Act* (OAS) pension. The Minister of Employment and Social Development (Minister) approved the Claimant's application for a partial pension (10/40ths). Payments would start in August 2020.

[3] On April 6, 2021, the Claimant asked the Minister for reconsideration. On February 14, 2022, the Minister responded to the Claimant, stating that the Claimant's request for reconsideration was more than 90 days late and so the Minister wouldn't consider it. The Claimant appealed to this Tribunal.

[4] The General Division allowed the Claimant's appeal, finding that her request for reconsideration to the Minister wasn't actually late. The next step was for the Minister to issue a reconsideration decision. The General Division couldn't decide anything more about the Claimant's entitlement to the OAS pension because there must be a reconsideration decision from the Minister first.¹

Issues

[5] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error that would justify granting the Claimant permission to appeal?
- b) Does the Claimant's application set out evidence that the General Division didn't have when it made its decision?

¹ See sections 27.1 and 28 of the OAS Act.

I'm not giving the Claimant permission to appeal

[6] I can give the Claimant permission to appeal if their application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact; or
- made an error in applying the law to the facts.²

[7] I can also give the Claimant permission to appeal if their application sets out evidence that wasn't presented to the General Division.³

[8] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

The Claimant hasn't raised an arguable case for an error by the General Division.

[9] The Claimant hasn't provided any arguments about any error that the General Division might have made when it decided that her request for reconsideration wasn't late.⁴

[10] I've reviewed the record. I'm satisfied that the General Division didn't ignore or misunderstand the relevant facts of the Claimant's appeal.⁵

[11] The Claimant was successful at the General Division: the General Division allowed her appeal. The next step is for the Minister to reconsider its decision of July

² See sections 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).

³ See section 58.1(c) of the Act.

⁴ See AD1, AD1A, AD1B, and AD1C.

⁵ This kind of review is consistent with what the Federal Court expects of the Appeal Division, see *Karadeolian v Canada (Attorney General)* 2016, FC 615.

2020. If the Claimant has evidence or arguments to make about her residence that would impact her OAS pension, she should provide those to the Minister, and not to the Tribunal.

The Claimant hasn't provided new evidence that would justify giving the Claimant permission to appeal the General Division decision.

[12] The Claimant hasn't provided any new evidence that would justify giving her permission to appeal the General Division decision. The General Division decided that the Claimant's request for reconsideration to the Minister wasn't late. The Claimant hasn't provided any new evidence about that issue that would justify giving the Claimant permission to appeal the General Division's decision on that issue.

[13] If the Claimant wants to challenge the number of years of residency in Canada that the Minister considered, she can provide that additional information to the Minister before they issue a decision on reconsideration.

Conclusion

[14] I've refused the Claimant permission to appeal the General Division decision to the Appeal Division. The General Division already allowed the Claimant's appeal. The next step is for the Minister to issue a decision on reconsideration.

Kate Sellar
Member, Appeal Division