



[TRANSLATION]

Citation: *SW v Minister of Employment and Social Development*, 2023 SST 1687

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. W.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated
October 20, 2023 (GP-23-1655)

Tribunal member: Jude Samson

Decision date: November 28, 2023

File number: AD-23-978

Decision

[1] I am refusing the Applicant, S. W., permission to appeal. This means that the appeal won't proceed.

Overview

[2] The Applicant applied for an Old Age Security (OAS) pension. The Minister of Employment and Social Development refused the application on August 26, 2021, upon reconsideration. Specifically, the Minister found that the Applicant didn't meet one of the eligibility criteria—he had only six years of residence in Canada when he needed at least ten years.

[3] On September 27, 2023, the Applicant appealed the Minister's decision to the Social Security Tribunal's General Division. But the General Division found that the appeal was filed more than a year late, so the appeal could not proceed.¹

[4] The Applicant now wants to appeal the General Division decision to the Appeal Division. He argues that the decision that is the subject of the notice of appeal is in the Minister's letter dated June 2, 2023 (not August 26, 2021).

[5] I find that the appeal doesn't raise an arguable case that the General Division made an error recognized by the law. Also, the Applicant didn't present any new evidence. So, I have no choice but to refuse permission to appeal.

Issues

[6] The issues are the following:

- a) Could the General Division have made an error by basing its decision on the Minister's letter dated August 26, 2021, instead of June 2, 2023?

¹ In this regard, the General Division applied section 52(2) of the *Department of Employment and Social Development Act* (DESD Act). This section says that the General Division cannot extend the time for appealing a decision of the Minister to more than one year. This one-year period starts from the date the person receives the Minister's decision.

- b) Does the application contain evidence that wasn't before the General Division?

I am refusing permission to appeal

[7] I can grant the Applicant permission to appeal if, in his application, he raised an arguable case that the General Division:

- failed to provide a fair process
- decided an issue that it didn't have the power to decide, or failed to decide an issue that it should have decided
- misinterpreted or misapplied the law
- made an error with respect to the facts²

[8] I can also grant permission to appeal if the Applicant's application contains evidence that wasn't before the General Division.³

– The General Division based its decision on the only reconsideration decision on file

[9] The issue before the General Division was whether the Applicant's appeal was filed late. In making its decision, the General Division focused on the Minister's reconsideration decision dated August 26, 2021.⁴

[10] But the Applicant argues that the General Division misdirected its attention and should have focused instead on the Minister's June 2, 2023, decision.⁵

² See sections 58(1)(a) and 58(1)(b) of the DESD Act.

³ See section 58(1)(c) of the DESD Act.

⁴ See GD2-301.

⁵ See GD2-300.

[11] The General Division was clearly right to focus on the reconsideration decision dated August 26, 2021, for the following reasons:

- This is the letter the Applicant submitted with his notice of appeal to the General Division.⁶
- The Tribunal can only decide issues the Minister has made a reconsideration decision on.
- The only reconsideration decision in the Applicant's file is the one dated August 26, 2021.

[12] The Minister's letter dated June 2, 2023, is of a different nature. It explains why the Minister is refusing to decide on a second reconsideration request from the Applicant, which the Minister received on September 14, 2022.⁷

[13] The Applicant maintains that the General Division should have considered the Minister's letter dated June 2, 2023, but the Tribunal doesn't have jurisdiction to reconsider the decision in that letter. So, I find that the Applicant hasn't raised an arguable case.

– **There is no new evidence in the application**

[14] The Applicant's application is based on the Minister's accompanying letter dated June 2, 2023. But this letter is also in the appeal file that was before the General Division.⁸

[15] So, I find that the Applicant's application doesn't contain any new relevant evidence that wasn't before the General Division.

⁶ See GD1-2 and GD1A-1.

⁷ This second reconsideration request starts on page GD2-270 of the appeal record.

⁸ See GD2-300.

[16] In addition to the Applicant's arguments, I have reviewed the file and reviewed the General Division decision.⁹ But I haven't found any other reasons for granting permission to appeal.

Conclusion

[17] Since the Applicant hasn't raised an arguable case and hasn't presented new evidence, I have to refuse permission to appeal. This means that the appeal won't proceed.

Jude Samson
Member, Appeal Division

⁹ The Federal Court has said that I have to do this in *Griffin v Canada (Attorney General)*, 2016 FC 874; and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.