



Citation: *AG v Minister of Employment and Social Development*, 2024 SST 56

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. G.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated November 24, 2023
(GP-23-419)

Tribunal member: Kate Sellar

Decision date: January 19, 2024

File number: AD-24-39

Decision

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

Overview

[2] A. G. (Claimant) has lived in Canada since October 2016. He applied for an Old Age Security (OAS) pension in October 2021. On his OAS application, he asked that payment of his pension begin at the earliest opportunity.

[3] To collect a partial OAS pension, claimants must be at least 65 years old, in Canada legally, and have lived in Canada for at least ten years.¹ If claimants don't have ten years of residence in Canada, they can still have a partial OAS pension if they have lived in a country or countries that have social security agreements with Canada. Those agreements can help claimants meet the ten-year residence requirement. But the years of residence in other countries based on those agreements are not counted when calculating the amount of the OAS pension.²

[4] The Minister of Employment and Social Development (Minister) found that given the Claimant's residence in Canada, and St. Lucia and Antigua and Barbuda based on social security agreements, he was entitled to a partial OAS pension of 4/40ths.

[5] The Claimant asked the Minister to reconsider the amount of the pension. The Minister did not change the calculation on reconsideration.

[6] The Claimant appealed to this Tribunal. The General Division dismissed the Claimant's appeal, finding that the Minister had not made any error in the calculation of the Claimant's OAS pension. The additional years the Claimant resided in countries with which Canada has social security agreements allowed the Claimant to qualify for a partial pension, but those years don't increase the amount of the Claimant's partial OAS

¹ See section 3(2) and 4 of the *Old Age Security Act* (OAS Act).

² See section 40(1)(d) and (e) of the OAS Act.

pension. The Claimant raised other issues with the OAS process which were not issues the General Division could make decisions about or fix.

Issues

[7] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error that would justify giving the Claimant permission to appeal?
- b) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

[8] I can give the Claimant permission to appeal if the 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 applying the law to the facts.³

[9] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.⁴

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

³ See section 58.1(a) and (b) in the *Department of Employment and Social Development Act (Act)*.

⁴ See section 58.1(c) in the Act.

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

[11] The Claimant argues that the General Division ignored the evidence he provided about being misinformed by the Minister's website. The website describes how the Minister decides who is eligible for an OAS partial pension and how residency will dictate the amount of that pension.

[12] The Claimant also argues that natural justice would require the Minister to concede (or for the Appeal Division to allow the appeal) because he did not understand the law about how the Minister calculates partial pensions in his situation until the General Division explained it.⁵

[13] The Claimant hasn't raised an arguable case for an error by the General Division. The Claimant believed that his years of residency outside Canada wouldn't just be counted towards his eligibility for a partial OAS pension. He thought those years would increase the amount of OAS pension he would receive. It wasn't until the General Division hearing that the Claimant understood how the rules about residency and OAS partial pensions work. The Claimant argues that General Division should have given him credit for being misinformed about partial OAS pensions by material on the Minister's website.

[14] However, there is no arguable case that the General Division had the power to credit the Claimant for being misinformed about the law. As a result, it cannot be an error for the General Division to ignore the evidence about the website.

[15] The General Division must apply the law about calculating OAS partial pensions exactly as it is written, regardless of how much the Claimant understood about it. If the Claimant was misinformed about the state of the law, the General Division doesn't have any powers to increase the amount of his partial pension as a result.

⁵ See AD1-2.

[16] I cannot give the Claimant permission to appeal. There is no argument here about the Minister miscalculating the Claimant's partial OAS pension that has a reasonable chance of success.

[17] I've reviewed the record. I'm satisfied that the General Division didn't ignore or misunderstand the evidence.⁶ The General Division calculated the OAS pension based on the years the Claimant was a resident in Canada and abroad under the relevant social security agreements.

[18] The Claimant's appeal raised important concerns about his experience with Service Canada both in terms of the letters and requests he received, and the information he tried to find on their website. However, this Tribunal has no power to address those experiences.

The Claimant hasn't set out new evidence

[19] The Claimant hasn't set out any evidence that wasn't presented to the General Division, so new evidence cannot form the reason for giving permission to appeal.

Conclusion

[20] I've refused permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division

⁶ The Federal Court anticipates this kind of review by the Appeal Division in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.