



Citation: *ZK v Minister of Employment and Social Development*, 2024 SST 119

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: Z. K.
Representative: E. K.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated November 2, 2023
(GP-22-608)

Tribunal member: Kate Sellar

Decision date: February 9, 2024

File number: AD-24-98

Decision

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

Overview

[2] Z. K. (Claimant) applied for an Old Age Security (OAS) pension. The Minister of Employment and Social Development (Minister) approved a partial OAS pension of 38/40ths, based on the Claimant residing in Canada from August 27, 1982 until July 1, 2021 (the day before his 65th birthday). The Claimant appealed the Minister's decision to this Tribunal, arguing that the Minister should have approved a partial pension of 39/40ths.

[3] The General Division dismissed the Claimant's appeal, finding that the Claimant was entitled to a partial pension of 38/40ths.

Issues

[4] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of fact by ignoring the Claimant's evidence about his request to postpone his OAS payments to extend his residency period in Canada to 39 years?
- b) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

[5] 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.¹

[6] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.²

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

There's no arguable case for an error by ignoring the Claimant's evidence

[8] The Claimant argues that the General Division made an error of fact by ignoring his evidence.³ The Claimant explains that as soon as he received the May 25, 2021 letter from the Minister stating that he would receive a partial OAS pension of 38/40ths, he wrote back. He requested reconsideration because he wanted the payment of his OAS pension postponed until he reached the full 39 years of residency in Canada, so that his partial pension would be in the amount of 39/40ths instead.⁴ The Claimant says the General Division ignored the fact that he made this request.

[9] The Claimant hasn't raised an arguable case for an error by the General Division. In its decision, the General Division acknowledged the Claimant's argument that his pension shouldn't have begun until he reached 39 years of residency.⁵

[10] However, the General Division explained that the Minister calculates the amount of the partial pension based on the number of years the Claimant resided in Canada

¹ See section 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).

² See section 58.1(c) of the Act.

³ See AD1-3 and 4.

⁴ See GD1-9.

⁵ See paragraph 11 in the General Division decision.

after turning 18, and before the day the Minister approves the application.⁶ The Minister approved the application based on a residency period that ended on July 1, 2021.

[11] The General Division didn't ignore or misunderstand the fact that the Claimant wanted his pension payments deferred until he reached 39 years of residency. When the Claimant applied, he stated that he wanted the OAS pension to start as soon as he was eligible.⁷ The Minister had already approved his application by the time the Claimant asked for the pension payments to start later. The Claimant hasn't raised an arguable case that the General Division ignored or misunderstood the request he made after the Minister had already approved the pension.

[12] The General Division set out what the law says about residency periods for the OAS pension, and then applied it to the Claimant's case. The request the Claimant made after the Minister already approved the application didn't change the outcome for the Claimant. The Claimant hasn't raised an arguable case about any error the General Division made in applying the residency period as its set out in the OAS Act.

[13] The General Division didn't ignore the evidence about the Claimant's reconsideration request. The General Division applied the law to the facts of the Claimant's application. Once the Minister approves an application for a partial OAS pension, the amount of the pension cannot be increased with additional years of residency in Canada.⁸

No new evidence that wasn't already presented to the General Division

[14] The Claimant set out any new evidence that wasn't already presented to the General Division. So new evidence cannot form the basis for giving him permission to appeal either.

⁶ See section 3(3) in the *Old Age Security Act* (OAS Act), and paragraphs 12 and 13 in the General Division decision.

⁷ See GD2-13.

⁸ See section 3(5) of the *Old Age Security Regulations*.

[15] I've reviewed the record. I'm satisfied that the General Division didn't ignore or misunderstand any other relevant evidence.⁹ The General Division explained that the period of residency for the Claimant's OAS pension starts when he arrived in Canada (August 27, 1982). The period of residency ends the day before his 65th birthday, which is July 1, 2021: "the period of residency cannot be extended until he reaches 39 years of residency."¹⁰

Conclusion

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

Kate Sellar
Member, Appeal Division

⁹ The Federal Court set the expectation for the Appeal Division to complete this kind of review in a case called *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

¹⁰ See paragraph 13 in the General Division decision.