Citation: *DB v Minister of Employment and Social Development*, 2025 SST 721

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	D. B.
Respondent:	Minister of Employment and Social Development

Decision under appeal:	General Division decision dated May 13, 2025 (GP-24-2020)

Tribunal member:	Kate Sellar
Decision date:	**July 9, 2025**
File number:	AD-25-435

Decision

[1] I'm refusing to give the Claimant (D. B.) leave (permission) to appeal. The appeal will not proceed. He is still entitled to a partial Old Age Security (OAS) pension of 4/40. These are the reasons for my decision.

Overview

[2] The Claimant was born in Canada in February 1957. From 1976 to 1985, he split his time between Canada and the United States, where he went to school and played hockey. He's lived in the US since October 2, 1985.

[3] The Claimant applied for an OAS pension on March 15, 2022. He said he wanted his pension to start in July 2022.

[4] The Minister granted the Claimant a partial OAS pension of 5/40 effective July 2022. The Claimant appealed to this Tribunal.

[5] The General Division dismissed the appeal, finding that the Claimant was entitled to a partial OAS pension of 4/40: the agreement with the US about social security gave him at least 20 years of residence, but the agreement didn't change the amount of his pension. He resided in Canada from February 16, 1975 (counting from his 18th birthday) until December 31, 1979 (4 years and 319 days).

Issues

[6] The issues in this appeal are:

a) Is there an arguable case that the General Division made an error of law in the way it applied the rules about OAS residency and the agreement with the US about social security to the Claimant's situation?

b) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

[7] 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;
- made an error applying the law to the facts.[1]

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

[9] 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 that the General Division made an error of law in the way it applied the OAS Act and agreement with the US about social security.

[10] The Claimant argues that the General Division made an error by finding that when he was living and working in the US, he stopped being a resident of Canada.[3] As I understand it, the Claimant argues that there's no reason why he can't be a resident of Canada while contributing to the US social security (by playing hockey in the US for part of each year). He says this isn't double dipping because Canada and the US have an agreement that coordinates between the two social security systems.

[11] The Claimant also argues that he was still a resident of Canada for most of 1985 because he was resident until October of that year when he moved to the US

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[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] The Claimants arguments are at AD1-3.

permanently. He says that Canada was where he lived, worked, paid taxes, and had a bank account and family until late 1985.

[12] And finally, the Claimant argues that the General Division made an error of law by finding that his schooling in the US affected his residency in Canada, since the law states that attending a school or university is deemed to not have interrupted a person's residence in Canada. He says he attended school until May 30, 1980 when he was 23 years of age.

– **The General Division applied the OAS Act and the agreement with the US to the Claimant's appeal.**

[13] The General Division explained that the agreement between Canada and the US means that years of contributing to either scheme can help a person to qualify for a pension. However, under the agreement, each country pays the part of the pension that is connected to the contributions they received.[4]

[14] So, if a claimant needs 20 years just to qualify for any amount of OAS pension in Canada and a claimant doesn't have that minimum to qualify, the time residing in Canada and the US can be added together in order to reach that 20-year mark. But each country still only pays the portion of the pension earned within their respective jurisdictions.[5] In the Claimant's case, that's a partial OAS pension of 4/40 because he was a resident of Canada for more than four but less than five years.

[15] The General Division didn't credit the Claimant with 1985 as a year in which the Claimant was resident in Canada for two reasons. First, because the Claimant's residence was already interrupted because of the work he was doing in the US after he finished school.[6] And second, in any event, the OAS Act doesn't allow the General

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[4] See paragraphs 24 to 29 in the General Division decision. The General Division applied section 21(5.3) of the *OAS Regulations*, as well as Article V of *the Second Supplementary Agreement Amending the Agreement Between the Government of Canada and the Government of the United States of American with Respect to Social Security* (Agreement).
[5] The General Division relied specifically on paragraph 52 of *Gumboc v Canada (Attorney General)*, 2014 FC 185 which explains that when working in the US, claimants are subject to the US social security legislation and are deemed to be non-resident in Canada.
[6] See sections 21(5.3) of the OAS Regulations and Article V of the Agreement.

Division to round up to the nearest year when calculating the amount of a partial pension.[7]

[16] The General Division did credit the Claimant with residency while he was in school in the US, consistent with the law.[8] The Claimant was in school in the US in 1976 through to May of 1980 and the General Division found the Claimant was resident in Canada from his 18th birthday in 1975 through to December 31, 1979, which was the last full calendar year that he was in school in the US. The General Division didn't find that it was school that interrupted his residency in Canada, it was the work he did in the US that interrupted his residency in accordance with the agreement with the US on social security.

– **There's no arguable case for an error of law by the General Division.**

[17] The General Division explained the parts of the law it applied to the Claimant's situation. While the Claimant wants the outcome of some of that analysis to be different, he hasn't provided any legal argument about how the existing law as its written should be applied or understood any differently and in a way that could change the outcome of his appeal. The Claimant's request for permission to appeal doesn't address what the General Division got wrong in its analysis of the content of the OAS Act and the agreement with the US on social security.

[18] Since the Claimant hasn't raised an arguable case that the General Division made any error in applying the OAS Act and its regulations or the agreement with the US, I cannot give him permission to appeal based on any possible error of law.

There's no new evidence.

[19] The Claimant hasn't provided any evidence that wasn't already presented to the General Division. The Claimant attached his CPP earnings and contributions, but the

[7] See paragraphs 25 to 27 in the General Division decision about the Claimant's residence being interrupted by the work he did in the US after he was finished with school. See also section 3(4) of the *OAS Act* about calculating residency.
[8] See section 21(4)(b) of the OAS Regulations.

General Division already had that information.[9] Accordingly, new evidence also cannot form the basis for permission to appeal.

[20] The Claimant stated that he's waiting for a document about his earnings that he has requested but he's not sure when it'll arrive. It's not clear if this is the same document that the Claimant was waiting for at the General Division.[10]

[21] I'm not granting leave on the basis of this document because the Claimant hasn't set out sufficiently what the document is that he requested, or what new evidence he believes the document will show. I cannot simply infer how this document might be relevant to or shed new light on the General Division's findings, so it cannot form the basis for the appeal.

[22] I've reviewed the written record.[11] I'm satisfied that the General Division didn't overlook or misunderstand any important evidence that could change the outcome for the Claimant.

Conclusion

[23] I've refused to give the Claimant permission to appeal. He is entitled to a partial OAS pension of 4/40. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division

[9] See AD1-18 and GD3-2.
[10] See paragraph 30 in the General Division decision.
[11] For more on this kind of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.