

[2021] NZSSAA 3

Reference No. SSA 92/2019

**IN THE MATTER** of the Social Security Act 2018

**AND**

**IN THE MATTER** of an appeal by **XXXX** of Auckland against a decision of the Chief Executive that has been confirmed or varied by a Benefits Review Committee

## **BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY**

**S Pezaro** - Deputy Chair

**J Ryall** - Member

**Hearing** at AUCKLAND on 9 January 2021

### **Appearances**

The appellant in person

R Stainthorpe, counsel, and I Ji, appeals officer, for the Ministry of Social Development

## **DECISION**

### **Background**

[1] XXXX (the appellant) appeals the decision by the Ministry of Social Development on 19 March 2019 to decline his application for New Zealand Superannuation because it did not have sufficient evidence that he met all the residency requirements. This decision was upheld by a Benefits Review Committee.

[2] The appellant turned 65 years on 22 March 2019. He has received Job Seeker Support with medical deferral intermittently since 2016. On 14 February 2019 the appellant filed an online application to transfer to New Zealand Superannuation. He subsequently signed the form which stated that he was born in the Cook Islands, arrived in New Zealand on 14 February 1982 and had lived in New Zealand for at least ten years since the age of 50, five of those years being over the age of 50. He indicated that he usually lived in New Zealand and intends to stay here, and that he had not lived in any other country except the Cook Islands.

- [3] The Ministry requested a travel movements report from Immigration New Zealand and on the basis of that report decided that the appellant met the five years requirement for residency since turning 50 years but did not meet the requirement for ten years residence in New Zealand since turning 20 years and that the appellant had had many brief periods residing in New Zealand rather than long periods.
- [4] The Ministry continued to request further information from the appellant so that it could review his entitlement. The Ministry continued to make requests after the appeal was filed and, as recorded in directions issued by the Authority, timetables were set and extended to allow the appellant further time to provide information showing that he was in the Cook Islands when not in New Zealand, and any other information to support his application.

### Relevant law

- [5] Section 8 of the New Zealand Superannuation and Retirement Income Act 2001 (the Act) sets out the residential eligibility criteria for New Zealand Superannuation:

#### **8 Residential qualification for New Zealand superannuation**

No person is entitled to New Zealand superannuation unless the person—

- (a) is ordinarily resident in New Zealand on the date of application for New Zealand superannuation, unless section 31(4) of this Act or section 191(4) of the Veterans' Support Act 2014 applies; and
- (b) has been both resident and present in New Zealand for a period or periods aggregating not less than 10 years since attaining the age of 20 years; and
- (c) has been both resident and present for a period or periods aggregating not less than 5 years since attaining the age of 50 years in any 1 or more of—
  - (i) New Zealand;
  - (ii) the Cook Islands;
  - (iii) Niue;
  - (iv) Tokelau.

- [6] The Ministry accepts that the appellant met the criteria in s 8(a) of the Act for residency in New Zealand at the date of application, and the requirement in s 8(c) to be resident and present in New Zealand for five years since reaching 50 years. However, the Ministry says the appellant does not meet the requirements of s 8(b) because he has not been resident and present in New Zealand for 10 years since reaching 20 years.
- [7] The Act was amended in January 2019 to allow applicants to meet the requirement for five years resident and present after age 50 by including periods of residence in the Cook Islands, Niue, or Tokelau or a combination of these places. However, as there is no equivalent provision for meeting the requirement in s 8(b), time residing in one of the

named Pacific Islands does not assist with the 10-year residency requirement. All applicants for New Zealand Superannuation are required to have ten years resident and present in New Zealand since attaining the age of 20 years.

### **Issue**

- [8] The issue we must decide is whether the appellant met the requirement to be resident and present in New Zealand for ten years after the age he turned 20 on the date of his application for New Zealand Superannuation, 22 March 1974.

### **The case for the appellant**

- [9] At the hearing the appellant accepted that the Ministry's record of the dates he was in New Zealand was correct. This record started in 1994. The appellant said that he arrived in New Zealand in 1982 aged 28 and worked for [Employer 1] in Wellington for a year. He has not been able to produce any documents recording this work. His father died while he was here and the appellant took him back to the Cook Islands for the tangi. The appellant also came to New Zealand in the 1970s for a short time but as he was 16 that time is not relevant to his eligibility.
- [10] The appellant provided a letter dated 5 November 2020 from the Acting Commissioner of the Cook Islands [Employer 2] confirming that the appellant joined [Employer 2] on 27 September 1979 and served until his retirement on 9 April 2014. The appellant also provided a letter dated 27 October 2020 from a Cook Islands solicitor who had known the appellant for over 40 years, including 22 years in the [Employer 2] service. The letter confirmed the appellant relocated to New Zealand about ten years ago.
- [11] The appellant provided other documents such as confirmation of enrolment at a tertiary institution in New Zealand for six months in 2003, a payslip from July 2018, confirmation of a bank account in New Zealand in November 2019 and bank statements for that account.
- [12] In evidence the appellant said that he was on leave from [Employer 2] the year that he worked in New Zealand. He said he returned to New Zealand in 2003 briefly to be with his mother who was ill. The appellant questioned how he could be eligible to vote and serve on a jury if he did not meet the residency requirements for New Zealand Superannuation. As we explained, there are particular requirements for entitlement to New Zealand Superannuation.

**The case for the Ministry**

[13] The Ministry submits that the information provided by the appellant after he filed his appeal confirms that he spent his day to day life in the Cook Islands between 1979 and 2014. Therefore the Ministry submits he has not met the requirement in s 8(b) of the Act for ten years resident and present in New Zealand since turning 20.

**Discussion**

[14] There is no dispute about the facts in this case. We have difficulty accepting the appellant's evidence that he spent a year in New Zealand in 1982 because the documentary evidence that he has produced from [Employer 2] and a solicitor indicates that his service in [Employer 2] over this period was continuous. However even if we accepted that the appellant was here for that year, he would not have met the requirements in s 8(b) of the Act at the date of his application.

[15] We conclude that the appellant was not eligible for New Zealand Superannuation on the date of his application because he did not meet the requirements in s 8(b) of the New Zealand Superannuation and Retirement Income Act 2001.

**Order**

[16] The appeal is dismissed.

**Dated at Wellington** this 2<sup>nd</sup> day of March 2021

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**S Pezaro**  
Deputy Chair

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**J Ryall**  
Member