

Citation: *J. B. v. Minister of Employment and Social Development*, 2015 SSTGDIS 25

Date: March 25, 2015

File number: GT-121791

GENERAL DIVISION- Income Security Section

Between:

J. B.

Applicant

and

**Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)**

Respondent

Decision by: Shane Parker, Member, General Division - Income Security Section

Heard by Teleconference on March 25, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant

INTRODUCTION

[1] The Appellant applied for Old Age Security (OAS) benefits on January 19, 2012. On February 16, 2012 her application was approved at the rate of 21/40ths effective September 2012. The Appellant asked that that decision be reconsidered. On May 17, 2012 the Respondent issued its reconsideration decision, which maintained the initial decision to grant the Appellant OAS benefits at 21/40ths. In August 2012 the Appellant appealed that decision to the Office of the Commissioner of Review Tribunals (OCRT). In April 2013 the appeal was transferred to the Social Security Tribunal of Canada (the Tribunal).

ISSUE

[2] The Tribunal must decide on the number of years the Appellant was resident in Canada.

THE LAW

[3] Section 257 of the *Jobs, Growth and Long-term Prosperity Act* of 2012 states that appeals filed with the OCRT before April 1, 2013 and not heard by the OCRT are deemed to have been filed with the General Division of the Social Security Tribunal.

[4] Section 3 of the *Old Age Security Act* (OASA) deals with the payment of full or partial pensions, and the rounding of the partial pension. The relevant provisions are reproduced as follows:

Payment of full pension

3. (1) Subject to this Act and the regulations, a full monthly pension may be paid to

(a) every person who was a pensioner on July 1, 1977;

(b) every person who

(i) on July 1, 1977 was not a pensioner but had attained twenty-five years of age and resided in Canada or, if that person did not reside in Canada, had resided in Canada for any period after attaining eighteen years of age or possessed a valid immigration visa,

(ii) has attained sixty-five years of age, and

(iii) has resided in Canada for the ten years immediately preceding the day on which that person's application is approved or, if that person has not so resided, has, after attaining eighteen years of age, been present in Canada prior to those ten years for an aggregate period at least equal to three times the aggregate periods of absence from Canada during those ten years, and has resided in Canada for at least one year immediately preceding the day on which that person's application is approved; and

(c) every person who

(i) was not a pensioner on July 1, 1977,

(ii) has attained sixty-five years of age, and

(iii) has resided in Canada after attaining eighteen years of age and prior to the day on which that person's application is approved for an aggregate period of at least forty years.

Payment of partial pension

(2) Subject to this Act and the regulations, a partial monthly pension may be paid for any month in a payment quarter to every person who is not eligible for a full monthly pension under subsection (1) and

(a) has attained sixty-five years of age; and

(b) has resided in Canada after attaining eighteen years of age and prior to the day on which that person's application is approved for an aggregate period of at least ten years but less than forty years and, where that aggregate period is less than twenty years, was resident in Canada on the day preceding the day on which that person's application is approved.

Amount of partial pension

(3) Subject to subsection 7.1(3), the amount of a partial monthly pension, for any month, shall bear the same relation to the full monthly pension for that month as the aggregate period that the applicant has resided in Canada after attaining 18 years of age and before the day on which the application is approved, determined in accordance with subsection (4), bears to 40 years.

Rounding of aggregate period

(4) For the purpose of calculating the amount of a partial monthly pension under subsection (3), the aggregate period described in that subsection shall be rounded to the lower multiple of a year when it is not a multiple of a year.

EVIDENCE

[5] The Appellant's OAS application was received on January 19, 2012 (GT1-13 to 14). The application states she resided in Canada from October 4, 1990 until "present". She listed a home address in Toronto. On February 16, 2012 the Respondent awarded her a partial OAS pension at the rate of 21/40ths effective September 2012 (when she turned 65) (GT1-4 to 5).

[6] At the hearing, the Appellant did not present any evidence to change her period of residence mentioned in her OAS application.

SUBMISSIONS

[7] The Appellant submitted that:

- a) As a Canadian resident of nearly 22 years (when she turned 65), and someone who worked hard as a Personal Support Worker, she is entitled to a higher OAS pension amount;
- b) She is aware of other individuals who receive a greater OAS pension payment than her;
- c) The Respondent wrongly discounted nearly eleven (11) months of residence in the calculation of her partial OAS pension.

[8] The Respondent submitted that in the circumstances, the Appellant received the maximum OAS permitted by law.

ANALYSIS

[9] In this appeal, it is clear that the Appellant did not meet the criteria for a full OAS pension under subsection 3(1) of the OASA.

[10] There is no dispute that the Appellant was entitled to a partial OAS pension based on her being resident in Canada from October 5, 1990 until she was 65 in September 2012. What the Appellant puts in issue is the rounding down of her partial OAS pension. In essence, she argues that it should not be rounded down to 21/40ths because she resided in Canada for “nearly 22 years” (GT1-29).

[11] In this case the Appellant in fact resided in Canada for 21 years, 10 months and 26 days between October 5, 1990 and August 21, 2012. However, the legislation is clear. According to subsection 3(4) of the OASA the amount of the partial pension shall be rounded to the lower multiple of a year when it is not a multiple of a year. The Respondent was correct and the Tribunal finds that the Appellant was entitled to a partial pension of 21/40ths effective September 2012, when she reached 65 years of age.

[12] As a pure creature of statute, the Tribunal must apply the law as written. It does not have jurisdiction to deviate from this task for equitable or extraneous reasons. As such, while the Tribunal accepts that the Appellant was a hard working Canadian and her partial pension amount did not reflect the complete amount of time spent as Canadian resident, and that others have been granted a higher pension amount than her, the law is clear: her pension amount must be rounded down to 21/40ths.

CONCLUSION

[13] The appeal is dismissed.

Shane Parker
Member, General Division - Income Security