

Citation: *M. N. v. Minister of Employment and Social Development*, 2015 SSTGDIS 128

Date: November 18, 2015

File number: GP-14-484

Between: **GENERAL DIVISION - Income Security Section**

M. N.

Appellant

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 November 3, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant

K. N., the Appellant's witness and spouse

INTRODUCTION

[1] On November 15, 2012 the Appellant was residing in the United States and applied for an Old Age Security (OAS) pension (GD3-15 to 18). On October 22, 2013 the Respondent denied the application on the basis that the Appellant allegedly did not meet the minimum residence requirement (GD3-13). On November 14, 2013 the Appellant asked that the Respondent reconsider this decision (GD3-11). In its reconsideration decision dated December 3, 2013, the Respondent maintained its original decision (GD3-9 to 10). The Appellant appealed this decision to the Tribunal's General Division on March 3, 2014.

[2] The hearing of this appeal was by teleconference for the following reasons:

- Videoconferencing is not available within a reasonable distance of the area where the Appellant lives;
- There are gaps in the information in the file and/or a need for clarification; and
- This method of proceeding respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

THE LAW

[3] Paragraph 3(2)(b) of the OAS Act pertains to the minimum residence period required for a foreign resident to qualify for an OAS pension abroad:

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.** [emphasis added here]

[4] Subsection 3(4) of the OAS Act provides that the rate of a partial pension is rounded down to the lower multiple of a year when it is not a multiple of a year:

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.

[5] Section 40 of the OAS Act permits Canada to enter into reciprocal arrangements with other countries in regards to the administration of social security benefits. Section 40 reads:

Reciprocal arrangements re administration, etc.

40. (1) Where, under any law of a country other than Canada, provision is made for the payment of old age or other benefits including survivors' or disability benefits, the Minister may, on behalf of the Government of Canada, on such terms and conditions as may be approved by the Governor in Council, enter into an agreement with the government of that country for the making of reciprocal arrangements relating to the administration or operation of that law and of this Act, including, without restricting the generality of the foregoing, arrangements relating to

(a) the exchange of such information obtained under that law or this Act as may be necessary to give effect to any such arrangements;

(b) the administration of benefits payable under this Act to persons resident in that country, the extension of benefits under that law or this Act to persons employed in or

resident in that country and the increase or decrease in the amount of the benefits payable under that law or this Act to persons employed in or resident in that country;

(c) the administration of benefits payable under that law to persons resident in Canada, the extension of benefits under that law or this Act to persons employed in or resident in Canada and the increase or decrease in the amount of the benefits payable under that law or this Act to persons employed in or resident in Canada;

(d) the totalization of periods of residence and periods of contribution in that country and periods of residence in Canada; and

(e) the payment by that country and Canada respectively, where applicable as a result of totalization, of prorated benefits based on periods of residence and periods of contribution in that country and periods of residence in Canada.

[emphasis added here]

[6] Canada and the United States entered into one such agreement on August 1, 1984, called the Agreement Between the Government of Canada and the Government of the United States of America with Respect to Social Security (the Canada/US Agreement).

[7] Chapter 2, Article VIII of the Canada/US Agreement (Second Supplementary Agreement dated May 28, 1996) provides:

Article VIII

1.

- a. **If a person is not entitled to the payment of a benefit because he or she has not accumulated sufficient periods of residence under the *Old Age Security Act*, or periods of coverage under the Canada Pension Plan, the entitlement of that person to the payment of that benefit shall, subject to sub-paragraph (1)(b), be determined by totalizing these periods and those specified in paragraph (2), provided that the periods do not overlap.**
- b. In the application of sub-paragraph (1)(a) of this Article to the *Old Age Security Act*:
 - i. only periods of residence in Canada completed on or after January 1, 1952, including periods deemed as such under Article VI of this Agreement, shall be taken into account; and

- ii. if the total duration of those periods of residence is less than one year and if, taking into account only those periods, no right to a benefit exists under that Act, the agency of Canada shall not be required to pay a benefit in respect of those periods by virtue of this Agreement.

2.

- a. **For purposes of determining entitlement to the payment of a benefit under the *Old Age Security Act*, a quarter of coverage credited under United States laws on or after January 1, 1952 and after the age at which periods of residence in Canada are credited for purposes of that Act shall be considered as three months of residence in the territory of Canada.**
[emphasis added here]

ISSUE

[8] The Tribunal must decide whether the Appellant met the minimum residence requirement to qualify for an OAS pension abroad pursuant to paragraph 3(2)(b) of the OAS Act and the Canada/US Agreement.

EVIDENCE

[9] The Appellant was born in Sri Lanka on June 30, 1947. She turned 65 in June 2012. When she applied for the OAS pension in November 2012, she was residing in the United States (GD3-15 to 16).

[10] The Appellant claims she resided in Canada from September 1985 to June 1998 (GD3-17). The Respondent claimed that she resided in Canada from September 1, 1985 to March 15, 1998 (a difference of 2.5 months) (GD3-13). She became a Canadian Citizen in June 1991 (GD3-20).

[11] The Appellant stated she has resided in the United States from July 1998 to “present”/time of OAS application (GD3-17). She also stated that she contributed to the US Social Security system for 16 quarters (GD3-11).

SUBMISSIONS

[12] The Appellant submitted that the Respondent wrongly considered her residence period in the United States to be 4 years, based on 16 quarters contributed to the US Social Security

system. Rather, she has resided in the United States for over 15 years, and her combined residence in the United States and Canada surpasses 27 years for the purposes of OAS eligibility. (GD3-3)

[13] The Respondent provided the following submission in its reconsideration decision dated December 3, 2013:

Your residence in Canada after age 18 and from January 1, 1952 and your periods of coverage in the United States after age 18 and from January 1, 1952 do not total the 20 years required for payment of the Old Age Security pension abroad.

We determined your Canadian residence to be from September 1, 1985 to March 15, 1998 for a total of 12 years, 6 months and 14 days of residence. You have 16 quarters of coverage in the United States as confirmed by the United States Social Security Office. Please note that 1 quarter of coverage is equal to 3 months of residence. Therefore, your coverage in the United States is equal to 4 years. Your periods of Canadian residence and coverage in the United States equal 16 years, 6 months and 14 days.

[emphasis in original]

ANALYSIS

[14] The Appellant must prove on a balance of probabilities that she is entitled to an OAS pension.

[15] The Tribunal finds that the Appellant's Canadian residence period began September 1, 1985. For the sake of discussion, the Tribunal will consider that this period extended to June 1998 (the longer period claimed by the Appellant). The period of Canadian residence, then, is 12 years, 9 months. As a resident of the United States when she applied for the OAS pension, she does not have enough Canadian residence (20 years) to qualify for the OAS pension abroad in accordance with paragraph 3(2)(b) of the OAS Act.

[16] However, it is agreed that the Appellant has 16 quarters of coverage under the US Social Security system, and that she has resided in the United States from July 1998 onward. She has at least one year of Canadian residence after January 1, 1952, but less than 20 years, therefore she may totalize her period of Canadian residence with the period contemplated in paragraph 2, Article VIII, of the Canada/US Agreement.

[17] This is where the dispute is focused. Where the parties mainly find themselves at odds, is not the residence period in the United States (which began in July 1998); but how this period is totalized with the Canadian residence period above. The Appellant claims that 1 year of US residence equates to 1 year of Canadian residence. The Respondent contends that 4 quarters of contributions to the US Social Security system equals 3 months of Canadian residence.

[18] Applying the law to the facts, the Respondent is correct. Paragraph 40(1)(d) of the OAS Act permits Canada to enter into agreements with other countries to totalize the periods of residence in Canada and periods of residence and periods of contribution in the other country. In the Canada/US Agreement, the totalization principle contemplates the period of residence in Canada and the periods of contribution credited to the US Social Security system. Subparagraph 2(a) of Article VIII of the Canada/US Agreement bears repeating:

For purposes of determining entitlement to the payment of a benefit under the *Old Age Security Act*, a quarter of coverage credited under United States laws on or after January 1, 1952 and after the age at which periods of residence in Canada are credited for purposes of that Act shall be considered as three months of residence in the territory of Canada.

[19] As such, in the present case, 16 quarters credited under the US Social Security system equals 48 months of residence in Canada (16 quarters x 3 months = 48 months), or 4 years (48 months/12 months/year = 4 years).

[20] Adding these 4 years to the pre-existing Canadian residence period (12 years, 9 months) amounts to 16 years and 9 months of totalized Canadian residence. This falls short of the 20 years of Canadian residence for a foreign resident (in this case an American resident) to qualify for an OAS pension abroad pursuant to paragraph 3(2)(b) of the OAS Act.

CONCLUSION

[21] The appeal is dismissed.

Shane Parker
Member, General Division - Income Security