



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v V. B.*, 2019 SST 1367

Tribunal File Number: AD-19-789

BETWEEN:

Minister of Employment and Social Development

Applicant

and

V. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision and Decision by: Shirley Netten

Date of Decision: November 28, 2019

DECISION AND REASONS

DECISION

[1] The Application for leave to appeal is granted, and the appeal is allowed.

BACKGROUND

[2] V. B. (the Claimant) successfully appealed the Minister's decisions about her entitlement to Old Age Security (OAS) and the Guaranteed Income Supplement (GIS). The Social Security Tribunal's General Division decided that the Claimant had been a resident of Canada since June 2002, and had not stopped being a resident in 2006. The General Division concluded that the Claimant was eligible for a full OAS pension as well as the GIS.

[3] The Minister applied for leave to appeal the General Division decision to the Tribunal's Appeal Division. The Minister accepts the General Division's findings about residency. The Minister argues that the General Division erred in law by granting a full, rather than partial, OAS pension.

AGREEMENT

[4] The parties participated in a settlement conference.¹ The parties then filed a written agreement and requested that I issue a decision. The agreement, dated November 25, 2019, states:

The parties agree this appeal should be allowed on the basis that the General Division erred in law under section 58(1)(b) of the *Department of Employment and Social Development Act* when it misinterpreted the *Old Age Security (OAS) Act*, specifically, paragraph 3(1)b).

The parties agree that the General Division erred in finding that the Respondent qualified for a full OAS pension.

¹ Section 17 of the *Social Security Tribunal Regulations*

The parties agree that the Respondent qualifies for a partial OAS pension and the Guaranteed Income Supplement.

Pursuant to section 18 of the Social Security Tribunal Regulations and subsection 59(1) of the *Department of Employment and Social Security Act [sic]*, the parties request that the Appeal Division grant the Appellant Leave to Appeal, allow the appeal and give the following order:

The Respondent is entitled to a partial OAS pension at the rate of 12/40ths effective September 2014, and GIS effective October 2014 for purposes of the Old Age Security Act. Thus, there is no overpayment created for the Respondent in respect of the OAS pension.

REASONS

[5] I accept the parties' agreement and find that the General Division erred in its interpretation of the *Old Age Security Act (Act)*. Where there has been an error of law, I have the power to vary the General Division decision.²

[6] The General Division thought that the Claimant was eligible for a full OAS pension because she was over 25 years old on July 1, 1977 and had been a Canadian resident for more than ten years before her application was approved. The General Division relied on section 3(1)(b) of the Act, but failed to fully consider one of the essential requirements for a full OAS pension within this provision:

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

[...]

(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,

² Sections 58(1)(b), 59(1) of the *Department of Employment and Social Development Act*

[7] On July 1, 1977, the Claimant was not a pensioner. She was older than 25, and she lived in another country. In these circumstances, section 3(1)(b)(i) applies only if on July 1, 1977 the person had resided in Canada for a period after age 18 or had a valid immigration visa. The uncontradicted evidence before the General Division was that the Claimant first resided in Canada in 2002 and that a visa had not been issued on or before July 1, 1977.³ The Claimant was therefore not eligible for a full OAS pension under section 3(1)(b).

[8] The Claimant was not otherwise eligible for a full OAS pension because she was not a pensioner in 1977⁴, nor did she have 40 years of residence in Canada when her OAS application was approved.⁵ Instead, the Claimant was eligible for a partial OAS pension, because she had resided in Canada for over 10 years when her application was approved in 2016.⁶

CONCLUSION

[9] The Application for leave to appeal is granted, and the appeal is allowed. The General Division decision is varied to reflect entitlement to a partial rather than full OAS pension.

[10] The Claimant is entitled to a partial OAS pension at the rate of 12/40ths effective September 2014, and to the GIS effective October 2014. There is no overpayment of the OAS pension.

Shirley Netten
Member, Appeal Division

REPRESENTATIVES:	S. Pilon, for the Applicant
	K. B., for the Respondent

³ See GD2-12

⁴ Section 3(1)(a) of the Act

⁵ Section 3(1)(c) of the Act

⁶ Section 3(2) of the Act