Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *A. B. v. Minister of Employment and Social Development*, 2016 SSTGDIS 92

Tribunal File Number: GP-15-2288

BETWEEN:

A. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

DECISION BY: Shane Parker

DATE OF DECISION: November 14, 2016

REASONS AND DECISION

BACKGROUND

[1] The Appellant's application for an OAS pension was date stamped by the Respondent on November 6, 2013 (GD2-3 to 6). According to the application, the Appellant listed a home address in the United States. On March 26, 2015 the Respondent denied the application on the basis that the Appellant did not have sufficient years of Canadian residence (initial decision at GD2-7 to 8). On April 16, 2015 the Appellant asked the Respondent to reconsider this decision (GD2-9 to 10). On June 2, 2015 the Appellant maintained the initial decision (the reconsideration at GD2-11 to 12). The Appellant appealed the reconsideration to the Social Security Tribunal of Canada (the Tribunal) on June 24, 2015.

[2] Further to the Tribunal's Notice of Hearing dated July 7, 2016 the hearing was conducted by teleconference for the following reasons:

- The method of proceeding provides for the accommodations required by the parties or participants;
- 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.

PRELIMINARY ISSUE

[3] The Appellant failed to appear at the hearing on November 2, 2016. Thirty minutes past the hearing's start time, she had not connected to the hearing. Therefore the preliminary issue before the Tribunal is whether to proceed in the parties' absence.

[4] The following provisions of the *Social Security Tribunal Regulations* (SST Regulations) are relevant in these circumstances.

[5] Section 2 of the SST Regulations states that "[t]hese Regulations must be interpreted so as to secure the just, most expeditious and least expensive determination of appeals and applications."

[6] According to paragraph 3(1)(a) of the SST Regulations, the Tribunal "must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit."

[7] According to subsection 12(1) of the SST Regulations, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing.

[8] In the present case, the language of subsection 12(1) is reproduced almost verbatim in the Notice of Hearing (GDO and GD0A).Tribunal staff confirmed the details of the hearing (GD0A) with the Appellant over the telephone on September 2, 2016. The Appellant also confirmed in that conversation that she understood that the Notices of Hearing (GD0 and GD0A) were identical except that the most recent one (GD0A) contained a different call-in identification number. As such, the Tribunal finds that the Appellant received notice of the hearing, but failed to appear. Further to the documentation submitted after the Notice of Hearing, the Tribunal finds that it is appropriate to proceed on the basis of the documents and submissions filed (on the record). The information filed answers the gaps that were to be filled at the hearing, namely the Appellant's period of Canadian residence, which is undisputed. Otherwise the appeal is highly technical and turns on the application of the law to the facts. A decision on the record is authorized by subsection 28(2) of the SST Regulations which states:

> 28. After every party has filed a notice that they have no documents or submissions to file — or at the end of the applicable period set out in section 27, whichever comes first — the Income Security Section must without delay
>
> (a) make a decision on the basis of the documents and submissions filed; […]

DECISION ON THE RECORD

THE LAW

[9] 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]

[10] 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.

[11] 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).

[12] 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 (l)(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]

[13] Article IX paragraph 3 (a) of the Canada/US Agreement states:

"Notwithstanding any other provision of this Agreement:

an Old Age Security pension shall be paid to a person who is outside Canada only if that person's periods of coverage, when added together as provided in Article VIII, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for entitlement to the payment of a pension outside Canada;"

[14] Section 32 of the OAS Act pertains to allegations of internal error and erroneous advice by the Respondent. The provision reads:

Erroneous Advice or Administrative Error

Where person denied benefit due to departmental error, etc.

32 Where the Minister is satisfied that, as a result of erroneous advice or administrative error in the administration of this Act, any person has been denied a benefit, or a portion of a benefit, to which that person would have been entitled under this Act, the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the erroneous advice not been given or the administrative

ISSUE

[15] There was no issue taken with the Appellant's residence period in Canada, and no information suggesting the Canadian residence period should be different.

[16] Where the dispute arises is whether the Canada/US Agreement assists the Appellant in meeting the minimum residence requirement of 20 years to qualify for a partial OAS pension as a US resident.

EVIDENCE

[17] The following pieces of documentary evidence were important:

a) The Appellant's OAS application indicating her period of Canadian residence to be September 1975 to May 1980 (GD2-5);

b) The U.S. Social Security Certified Coverage Record indicating 22 quarters of coverage, less 2 overlapping quarters, totaling 20 quarters (GD2-15to 17).

SUBMISSIONS

[18] The Appellant submitted that she should qualify for an OAS pension; and that employment history is not a factor in this determination. The Appellant argued that the Respondent is basing its denial upon work credits and not residence. The Appellant further alleged that Service Canada agents misled her (GD2-9 to 10).

[19] The Appellant later submitted that her late husband's Canadian residence period should be combined with hers in the determination of her OAS pension eligibility (GD3).

[20] The Appellant argued that the US Social Security Administration (SSA) informed her that she qualified for an OAS pension, therefore she is entitled to one (GD3).

[21] Finally, the Appellant seeks an OAS pension on compassionate grounds (GD3-3).

[22] The Respondent submitted that the Appellant does not qualify for an OAS pension as a foreign resident based on domestic laws. She does not meet the residence requirement of 20 years pursuant to paragraph 3(2)(b) of the OAS Act. Furthermore, she does not qualify under the Canada/US Agreement. This Agreement does not consider periods of residence in the US as periods of residence in Canada.

ANALYSIS

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

[24] It is immaterial what the US SSA may have advised her about OAS pension eligibility because Canadian authorities determine eligibility for OAS benefits.

[25] Turning to the Appellant's case, the Canadian residence period is agreed to be from September 1975 to May 1980, or 4 years and 8 months (GD2-5; GD6-2). On this basis, the Appellant does not meet the 20-year requirement under subparagraph 3(2)(b) of the OAS Act. The undisputed evidence before the Tribunal regarding overlapping periods of contributions to the US Social Security scheme amounts to 2 quarters during 1975 (GD2-5; GD2-16; GD6-2). Only non-overlapping periods can be considered pursuant to subparagraph 1(a) of Article VIII of the Canada/US Agreement. This leaves 20 quarters of coverage to consider.

[26] The Canada/US Agreement deals with quarters of coverage and not years of residence in the United States. Subparagraph 2(a) of Article VIII is authority for this proposition. It is copied here for ease of reference:

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(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]

[27] The meaning of a "quarter of coverage" and the fact that it does not correspond to years of residence in the U.S. under the Canada/US Agreement was also specifically discussed by the Federal Court in *Canada (Minister of Human Resources Development) v. Stiel,* 2006 FC 466. In that decision, the Federal Court considered the definition of "quarter of coverage" under US law, and read the term "quarter of coverage" together with Article I (6) of the Agreement, which distinguishes between a "period of coverage" and a "period of residence". It concluded that the agreement does not allow years of residence in the US to count towards OAS, but rather "quarters of coverage" as defined in US law which refers to a quarter with a minimum amount of wages (see *Stiel* at paragraph 33 thereof).

[28] The Tribunal notes the Appellant's argument that the Respondent wrongly denied her application based on "work credits", while ignoring "residence." However, "work credits" and US "residence" do not enter the equation in determining the Appellant's eligibility for an OAS pension under both the OAS and the Canada/US Agreement. As explained above, what matters are her years of residence in Canada and her quarters of coverage in the United States.

[29] In the Appellant's case, 20 US quarters x 3 months equals 60 months, or five years of residence. Adding an additional five years of residence to the Appellant's Canadian residence period still falls short of 20 years (4 years, 8 months + 5 years = 9 years, 8 months). In other words, the Appellant has failed to meet the minimum residence requirement under paragraph 3(2)(b) of the OAS Act and has not met this requirement pursuant to paragraph 3(a) Article IX of the Canada/US Agreement which states that an OAS pension shall be paid to a person who is outside Canada only if that person's periods of coverage, when added together as provided in Article VIII, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for entitlement to the payment of a pension outside Canada (20 years pursuant to paragraph 3(2)(b) of the OAS Act).

[30] There is no provision in the OAS Act, the OAS Regulations, or the Canada/US Agreement supporting the Appellant's contention that an OAS pension applicant can combine their spouse or former spouse's Canadian residence period with theirs, in establishing eligibility for a pension. There is also no legal text before the Tribunal that supports this argument.

[31] The Appellant alleges she was misled by the Respondent's agents. However, the Tribunal does not have jurisdiction to adjudicate such matters pursuant to section 32 of the OAS Act. Rather, it is the Respondent who has initial jurisdiction.

[32] Finally, the Appellant seeks an OAS pension on compassionate grounds. As a creature of statute, the Tribunal has no authority to grant such a request. Rather, the Tribunal's powers are limited to applying the law to the facts before it. After having done so in this case, the Appellant's appeal was unsuccessful.

CONCLUSION

[33] The appeal is dismissed.

Shane Parker
Member, General Division - Income Security