



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. S. v. Minister of Employment and Social Development*, 2017 SSTGDIS 161

Tribunal File Number: GP-16-2013

BETWEEN:

**A. S.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Shannon Russell

HEARD ON: October 4, 2017

DATE OF DECISION: October 31, 2017

## **REASONS AND DECISION**

### **OVERVIEW**

[1] The Appellant applied for an Old Age Security (OAS) pension in March 2014. The Respondent denied the application at the initial and reconsideration levels of adjudication. The Appellant appealed the Respondent's reconsideration decision to the Social Security Tribunal (SST or Tribunal).

### **DECISION**

[2] The Tribunal has decided, for the reasons set out herein, that the Appellant is not eligible for an OAS pension.

### **FORM OF HEARING**

[3] Before scheduling a hearing in this matter, the Tribunal wrote to the Appellant's representative on June 15, 2017 and indicated that the Tribunal Member intended to hear this appeal by teleconference and that the hearing would likely take place in September 2017. The Tribunal asked the Appellant's representative to advise the Tribunal in writing of whether the Appellant would be participating in the hearing and, if so, whether he would be participating from Canada or Lebanon.

[4] The Tribunal did not receive a reply to its request by the deadline of July 7, 2017 and so the Tribunal proceeded to schedule a hearing in this matter.

[5] This appeal was heard by Teleconference for the following reasons:

- a) There were gaps in the information in the file and/or a need for clarification.
- b) This method of proceeding respected the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

- c) The Tribunal attempted to clarify with the Appellant's representative whether the Appellant would be participating in the hearing. However, the Appellant's representative did not respond to the Tribunal's query.

## **PRELIMINARY ISSUES**

[6] The Notice of Hearing was issued to the parties on July 13, 2017. On July 21, 2017, the Appellant's representative signed for receipt of her Notice of Hearing as well as the Appellant's Notice of Hearing (the Appellant's mailing address is the same as his representative's address).

[7] The hearing was scheduled to commence at 10:00 a.m. on October 4, 2017. At that time, neither the Appellant nor his representative had dialed into the teleconference. The Tribunal Member held the teleconference open for 30 minutes, in the event the Appellant and/or his representative were inadvertently delayed, however, no one joined the teleconference during that 30 minute period.

[8] The Tribunal was satisfied that the Appellant's representative had received Notice of the Hearing and thus the Tribunal Member proceeded to render a decision in this matter, as authorized by subsection 12(1) of the *Social Security Tribunal Regulations*.

## **THE LAW**

[9] Subsection 3(2) of the OAS Act sets out the eligibility requirements for payment of a partial OAS pension. To qualify for a partial OAS pension, an applicant must:

- a. Be at least 65 years of age; and
- b. Have resided in Canada after attaining 18 years of age and prior to the day on which that person's application is approved for an aggregate period of at least 10 years, but less than 40 years and, where that aggregate period is less than 20 years, was resident in Canada on the day preceding the day on which that person's application is approved.

## EVIDENCE

[10] The Appellant was born in Lebanon in August 1948 and reached the age of 65 in August 2013. He first applied for an OAS pension in March 2013 and in that application he reported that he lived in Canada from February 3, 1968 to October 15, 1984 and thereafter lived in Lebanon where he continued to live at the time of his application (GD2-14 to GD2-18). The Respondent denied the application in October 2013 because the Appellant had only lived in Canada for 16 years and 257 days and thus did not satisfy the 20-year residency requirement (GD2-71 to GD2-72).

[11] The Appellant applied for an OAS pension again in March 2014 and in his application (which he signed on March 21, 2014) he reported his residence history as follows:

<b>Dates of Residence (MM/DD/YYYY)</b>	<b>Country of Residence</b>	<b>Address</b>
02/03/1968 to 01/01/1980	Canada	X Halifax, NS
01/01/1980 to 10/15/1984	Canada	X, QC [city not identified]
01/01/1984 to 03/10/2014	Lebanon	[Not provided]
03/10/2014 to Present (i.e. the date of his application)	Canada	X. [city and province not identified]

[12] A document from Citizenship and Immigration Canada indicates that the Appellant arrived in Canada on February 3, 1968 and became a Permanent Resident on June 28, 1968 (GD2-38).

[13] A Housing Certificate from the Republic of Lebanon, Ministry of Interior and Municipalities, dated June 4, 2013, indicates that the Appellant lived in X from 1966 to 1968 and from 1984 to the present (GD2-100).

[14] Another Housing Certificate from the Republic of Lebanon, dated July 20, 2013, indicates that the Appellant's spouse does not have a job and has lived in Lebanon since her birth in 1964.

[15] The evidence includes a copy of the Appellant's statement of contributions to the CPP and QPP. This document shows he made contributions from 1968 to 1992 inclusively (GD2-68).

[16] On August 21, 2013, the Appellant signed a letter indicating that, although he left Canada in 1984, his “payables” (which the Tribunal understands to mean CPP contributions) did not stop until 1992 because his brother was monitoring his work in Canada. During that time the Appellant did not travel to Canada because of health problems that forced him to stay in Lebanon.

[17] An airline ticket shows the Appellant was booked on a flight on March 10, 2014. The ticket does not appear to show the destination but a handwritten note at the bottom of the ticket says “air ticket from Lebanon to Montreal Canada” (GD2-86).

[18] In May 2014, the Respondent wrote to the Appellant and asked him to provide a copy of his lease and to complete a Questionnaire and authorization forms that were included with the letter (GD2-50).

[19] A letter from the Régie de l’assurance maladie du Québec (RAMQ) dated June 25, 2014 and addressed to the Appellant as “X” indicates that, as a person residing in Quebec, the Appellant is eligible for the health insurance as of July 1, 2014 and that his health card will be issued to him in the days following July 1, 2014 (GD2-82).

[20] On July 7, 2014, the Respondent received several documents from the Appellant, including:

- a copy of a lease that the Appellant and his daughter signed in October 2012 for X. The lease identifies the Appellant and his daughter as lessees and the Appellant reported his address (at the time he signed the lease) as X, Halifax, NS. The lease was for a fixed term, being from October 15, 2012 to June 30, 2013 and identifies the apartment as having 4.5 rooms (GD2-62 to GD2-65).
- two consent forms signed by the Appellant on June 9, 2014. The forms authorize Nova Scotia Health Insurance and the RAMQ to release information to Service Canada for the purpose of determining the Appellant’s eligibility for the OAS pension. Each of the consent forms was missing the Appellant’s health insurance number (GD2-46 and GD2-49).

- A Questionnaire signed by the Appellant on June 9, 2014 in which he reported that (GD2-56 to GD2-57):
  - He returned to Canada on March 9, 2014 and his return is permanent.
  - He returned because his daughters had finished their education and are settled in Canada.
  - He will not be returning to live in another country.
  - He considers his permanent place of residence to be X, Montreal, QC.
  - He keeps a place to live in Lebanon (at X, X).

[21] By letter dated August 20, 2014, the Respondent asked the Appellant to provide a copy of his Quebec Health Insurance Card and to contact the Nova Scotia Medicare office to obtain his medicare number (GD2-48).

[22] The Appellant provided a copy of his Quebec health card on August 28, 2014 and it shows an expiry date of June 2015 (GD2-85).

[23] In October 2014, the Respondent sent a Questionnaire to an individual who the Appellant had identified as a person who could confirm his residency in Canada. The Respondent explained in the Questionnaire that the Appellant had stated that he lived in Canada from 1968 to 1984 and from March 2014 to the present, and the Respondent asked the person to confirm all or part of the residence. The individual completed the Questionnaire on October 21, 2014 and reported that he has known the Appellant for two years and can only confirm the Appellant's residency in Canada from March 2014 to the present day (GD2-45).

[24] On June 2, 2015, the Respondent's investigator spoke with the owner of the building at X and the investigator's notes indicate that the landlord said the Appellant's daughter initially rented the apartment but he asked her to get a co-signor. The Appellant's daughter pays the rent and she pays by cheque or cash. The Appellant was not originally living with his daughter but he seems to have been staying there for the past two months or so. He does not get into their

business and does not know an exact date of when the Appellant began staying in the apartment (GD2-32).

[25] On June 3, 2015, the Respondent's investigator attended the address of X and her notes indicate that there was no answer at the apartment and there was no car in the allotted parking spot. She reported that on June 4, 2015 she called the Appellant's daughter (who is also the Appellant's representative in this appeal) and the Appellant's daughter reportedly said that the Appellant was in Lebanon visiting his mother. She said she did not know when he left but that he should be purchasing his return ticket soon. When asked about whether the Appellant is receiving a pension in Lebanon, she said that he is and that she will ask her father to get confirmation of the pension amounts from the government of Lebanon. The Appellant's daughter also said she would contact the investigator to schedule an interview once the Appellant is scheduled to return to Canada (GD2-31).

[26] On September 18, 2015, the Respondent received an undated letter that was reportedly signed by the Appellant. (The signature is not consistent with the Appellant's other signatures on file including his passport signatures). In any event, the letter states that there had been a misunderstanding and that the only pension the Appellant is receiving is a pension from Canada and not from Lebanon. The letter also states that the records of entries and exits pertaining to Lebanon and Canada have been lost and there is no other proof he can obtain besides the documents he has already provided. He is currently in Lebanon being treated medically and he is unable to return to Canada without doctor's orders. Due to his medical state, he cannot recall all of the dates the Respondent is asking about without looking back into his records. He believes these dates were on his application (GD2-34). With his letter the Appellant enclosed a T4 showing his pension income for the year 2014 (GD2-35).

[27] The Respondent's investigator spoke with the Appellant's daughter again on October 5, 2015 and, according to the investigator's report, the Appellant's daughter stated that the Appellant resided in Canada until 1984 and then returned to Lebanon and thereafter dated and married her mother. The Appellant has three daughters (born in 1985, 1986 and 1988) and each daughter was born in Lebanon. The Appellant has always supported his family financially as his spouse has never worked. The Appellant is living in North Lebanon with his wife and is not

planning to return to Canada for now because he is too ill to travel. He has memory loss and diabetes. The Appellant's spouse has "only visited Canada once last year". With respect to the Appellant's statement in his application that he returned to Canada permanently in 2014, he travels between Lebanon and Canada and when he is in Canada he stays with her. The investigator noted that she requested a number of documents, namely a document showing the Appellant's entries and exits from Lebanon, a document showing the Appellant's pension from Lebanon, and consent forms regarding accessing information from the RAMQ, NS Health, and the CBSA (GD2-30).

[28] After the interview, the Respondent's investigator sent a letter to the Appellant (at the X address) and explained that further information was needed, namely, a certified document issued by the Lebanese government showing the Appellant's entries and exits from Lebanon from 1968 to the present; a certified document issued by the Lebanese government indicating whether the Appellant is receiving a pension and if so, the amounts of the pension from 2013 to the present; and signed consent forms (which were included with the letter) (GD2-33).

[29] The evidence includes portions of some of the Appellant's passports, including:

- A Canadian passport (PD293411) issued in Halifax on April 25, 1983 and bearing an expiry date of April 25, 1988 (GD2-90)
- A Canadian passport (YW205651) issued in Damascus on April 25, 1988 and bearing an expiry date of October 25, 1988 (GD2-95).
- The identification pages of a Canadian passport (GA187415) issued in Beirut on January 10, 2014 (GD2-87).

[30] On December 7, 2015, the Respondent wrote to the Appellant and informed him it had stopped the review of his OAS application because the Respondent had made several attempts to obtain authorizations and documents from the Appellant but the Respondent's attempts were unsuccessful (GD2-7 to GD2-8).

[31] On January 12, 2016, the Respondent received an undated letter from the Appellant asking the Respondent to reconsider its decision. The Appellant said that the Lebanese



government has informed him that he should be expecting the documents soon (i.e. the list of entries and exits since 1968 and proof of not receiving a Lebanese pension) (GD2-6).

[32] By letter dated May 12, 2016, the Respondent informed the Appellant that it had reconsidered its decision and decided to maintain the original decision because the Appellant had not provided the authorizations and documents the Respondent had requested (GD2-3 to GD2-4).

[33] The Appellant's representative appealed the Respondent's reconsideration decision to the SST and in the Notice of Appeal, dated June 7, 2016, she indicated that the Appellant's home address is in Lebanon (GD1-4). With respect to her grounds for appeal, she stated that they have submitted all of the required documents. She said they were asked to provide proof of entries and exits and they informed the Respondent that it would take a long time to obtain those documents. She added that when those documents were received, they were sent immediately but the application was rejected (GD1-5).

## **SUBMISSIONS**

[34] The Appellant submitted that he qualifies for an OAS pension because he re-established his residency in Canada in March 2014.

[35] The Respondent submitted that the Appellant does not qualify for an OAS pension because the Appellant has not resided in Canada for at least 20 years. He resided in Canada from June 28, 1968 to October 15, 1984, which totals 16 years and 111 days. The Appellant failed to provide evidence confirming that his return to Canada in March 2014 was permanent. Information on file shows that since March 2014 the Appellant has had presence in Canada and that his main residence has been in Lebanon.

## **ANALYSIS**

[36] Subsection 21(1) of the OAS Regulations distinguishes between the concepts of residency in Canada and presence in Canada. Paragraph 21(1)(a) states that a person resides in Canada if he makes his home and ordinarily lives in any part of Canada. Paragraph 21(1)(b) states that a person is present in Canada when he is physically present in any part of Canada.

[37] There are a number of factors that are relevant to the determination of whether a person makes their home and ordinarily lives in Canada. These factors include, but are not limited to:

- a) Ties in the form of personal property (i.e. house, business, furniture, automobile, bank account, credit card);
- b) Social ties in Canada (i.e. membership with organizations or associations, or professional membership);
- c) Other ties in Canada (i.e. hospital and medical insurance coverage, driver's license, rental, lease, loan or mortgage agreement, property tax statements, electoral voter's list, life insurance policies, contracts, public records, immigration and passport records, provincial social services records, public and private pension plan records, federal and provincial income tax records);
- d) Ties in another country;
- e) Regularity and length of stay in Canada and the frequency and length of absences from Canada; and
- f) The person's mode of living (i.e. whether his or her living in Canada is substantially deep rooted and settled) (*Canada (MHRD) v. Ding*, 2005 FC 76).

[38] The Respondent has acknowledged in its written submissions of March 22, 2017 that the Appellant resided in Canada from June 28, 1968 to October 15, 1984, a period of 16 years and 111 days (GD3-11 at paragraph 34). The Appellant acknowledged in his March 2014 application that between 1984 and March 10, 2014 he was residing in Lebanon and, therefore, the Tribunal focused its analysis on whether the Appellant has shown that he re-established residency in Canada at any time in or after March 2014. Having said this, the Tribunal acknowledges that the period from February 3, 1968 to June 27, 1968 appears to be in dispute between the parties.

[39] The Tribunal accepts that the Appellant arrived in Canada on March 10, 2014; however, the Tribunal is unable to find, even on a balance of probabilities, that the Appellant re-established residency in Canada on or after that date.

[40] First, it does not appear to be disputed that the Appellant is currently residing in Lebanon. His Notice of Appeal that was completed in June 2016 indicates that his home address is in Lebanon and the Tribunal has not been informed that his home address has changed since that time.

[41] Second, the Tribunal does not know how much time the Appellant spent in Canada after his arrival on March 10, 2014. The Appellant did not provide any documentation showing the dates of his stays in Canada in or after March 2014 and, because the Appellant did not attend the hearing, the Tribunal did not have the benefit of his testimony. The Appellant appears to have been in Canada on June 9, 2014 (when he signed the Questionnaire and health care coverage authorizations), and he appears to have been in Canada in October 2014 (when one of his references confirmed in a Questionnaire that the Appellant was residing in Canada) but the Tribunal does not know if the Appellant stayed in Canada continuously throughout this period or whether he travelled between Canada and Lebanon. This is a legitimate concern given that the Appellant's daughter reportedly acknowledged during a telephone conversation with the Respondent's investigator in October 2015 that the Appellant travels between Lebanon and Canada.

[42] Third, the Appellant has provided little evidence to show what efforts he made to re-establish residency in Canada in or after March 2014. It is clear that the Appellant applied for a Quebec health card but that in and of itself is insufficient to show residency in Canada. The Tribunal does not know, for example, whether the Appellant sought the services of a health care practitioner in Quebec.

[43] Fourth, during the period in and after March 2014, the Appellant had significant ties in Lebanon. His spouse lives in Lebanon and, according to the Appellant's Questionnaire of June 2014, he maintains a place to live in Lebanon (X, X).

[44] Fifth, although the Appellant stated in his Questionnaire of June 2014 that his return to Canada was a permanent return, the Tribunal had concerns with the Appellant's credibility and, as a result, the Tribunal was not prepared, absent corroborating evidence, to give the Appellant's statement much weight. One of the reasons why the Tribunal had concerns with the Appellant's credibility is because he has not always been completely forthright with respect to his place of

residence. For example, the Appellant reported in his OAS application that he resided at X, Halifax, Nova Scotia from February 1968 to January 1980, that he resided in Quebec from January 1980 until October 1984 and that he resided in Lebanon from 1984 to March 10, 2014. However, when the Appellant signed the lease in October 2012 for the apartment on X., he reported his address as X, Halifax.

[45] For the reasons set out above, the Tribunal finds that the Appellant did not re-establish residency in Canada in or after March 2014. He, therefore, does not meet the 20 year residency requirement to be eligible for a partial OAS pension. The Tribunal does not consider it necessary to assess whether the Appellant was residing in Canada between February 3, 1968 and June 28, 1968 because even if that period of time is included in his residence the Appellant would still be unable to meet the 20 year residency requirement.

## **CONCLUSION**

[46] The appeal is dismissed.

Shannon Russell  
Member, General Division - Income Security