



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. E. v. Minister of Employment and Social Development*, 2018 SST 473

Tribunal File Number: GP-16-2928

BETWEEN:

A. E.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Carol Wilton

Videoconference hearing on: June 7, 2018

Date of decision: June 21, 2018

DECISION

[1] The Claimant is eligible for a partial *Old Age Security Act* (OAS) pension of 18/40^{ths} effective October 2015.

OVERVIEW

[2] The Claimant applied for an OAS pension on June 4, 2014, approximately two months before he turned 65 years old. Because he did not supply information requested by the Minister, the Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

PRELIMINARY MATTERS

[3] The Claimant stated in his Notice of Appeal that his residency in Canada exceeded the 10-year requirement for a partial pension, but did not indicate the years for which he believed a partial pension was payable.¹

[4] The Minister stated in September 2017 that the Claimant had obtained 18 years of residence in Canada during the period 1988 to 2006. He resumed residence in Canada in September 2015, and was therefore entitled to a partial OAS pension of 18/40^{ths} effective October 2015.

[5] By Question and Answer, dated February 7, 2018, the Tribunal asked the Claimant whether he was in agreement with this determination, and if not, why not.

[6] In response, the Claimant submitted that the period from October 17, 2006 to September 23, 2015 should be included in his period of residency in Canada because he was a missionary in Egypt during that period.² An amended submission, dated March 27, 2018, requested that his OAS pension should be calculated from June 14, 1988 to July 31, 2014 and pension payment should start from August 1, 2014.³

¹ GD1-6

² GD11-6

³ GD13-1

[7] The Minister provided no submissions in response to the Claimant's Question and Answer document.

[8] The Tribunal then held a videoconference hearing to obtain more information about the Claimant's activities during 2006-2015.

ISSUES

[9] The parties are agreed that the Claimant was not entitled to a full OAS pension.

[10] The parties further agreed that the Claimant was entitled to a partial OAS pension for the period from June 14, 1988 to October 16, 2006.

[11] The first issue is whether the years 2006 to 2014 should be counted towards the calculation of the partial pension.

[12] The second issue is whether the Claimant's payments should commence in August 2014 when he turned 65, or in October 2015, when the application was approved.

ANALYSIS

Test for a Partial OAS Pension

[13] To qualify for a partial monthly pension, a claimant who is not entitled to a full OAS pension must be 65 years old, must have lived in Canada for at least ten years after the age of 18, and must have been resident in Canada prior to the day their application was approved if their period of residence was less than 20 years.⁴

[14] For the purposes of the OAS Act, a person resides in Canada if he or she makes their home and ordinarily lives in any part of Canada.⁵

[15] Under certain circumstances, a person's absence from Canada is considered not to interrupt their residence or presence in Canada, including periods when he or she was "employed or engaged out of Canada ... as a missionary with any religious group or organization."⁶

⁴ Subsection 3(2) OAS Act

⁵ Paragraph 21(2)(a) of the OAS Regulations

[16] The onus is on the Claimant to establish, on a balance of probabilities, his period of residency in Canada.⁷

The Claimant has not established his claim to have been employed or engaged as a missionary from October 17, 2006 to July 31, 2014

[17] There is no evidence that the Claimant was employed or engaged as a missionary between October 17, 2006 and January 1, 2007, so that he has not established his claim for this period.

[18] The Claimant testified that he went to Egypt in October 2006 to help care for his mother-in-law, who was in frail health. Sadly, she died in March 2016. On a questionnaire dated in September 2014, he wrote that he left Canada to care for his mother and mother-in-law and his children when they were studying in Egypt.⁸

[19] The Claimant further testified that after October 2006 he returned to Canada periodically to pursue his applications for pensions there, for the *Canada Pension Plan* (CPP) disability pension and perhaps the Ontario disability pension.

[20] The Claimant submitted that he was a missionary in Egypt from January 2007 to August 2015; therefore the period from January 2007 to July 2014 should be included in his period of residency in Canada. In support of this, he provided a translation of a certificate signed by the Chairman of the Board of Directors of the Fadle El Eman Association (the Association) in Cairo, issued on August 20, 2015 (the certificate).⁹ It reads as follows:

“Fadle EL Eman Association” registered under number 6164 of the year 2005 hereby certifies that Engineer A. E., had worked as a Treasurer from January 1, 2007 till August 15, 2015 in addition to his Missionary Religious Activities and Supervising Qur’an memorizing programs. It was noted, that this work was voluntary without pay.

[21] At the hearing, the Claimant testified that the Association was a religious one. The Claimant and some friends and relatives had established it in 2007 to help low-income people in

⁶ OAS Regulations, Paragraph 21(4)(c) and subparagraph 21(5)(b)(vi)

⁷ *B. D. v. Minister of Employment and Social Development*, 2016 SSTADIS 392, a decision that is not binding on me but that is persuasive.

⁸ GD2-49

⁹ The certificate states that the Association was founded in 2005, though the Claimant testified that it was founded in 2007. He was in Egypt for five months in 2005 (GD8-10), so that he could have been involved if the organization was founded then.

their neighbourhood of X (a part of Greater Cairo), by giving them food and blankets, and by teaching religion and giving academic tutoring to their children up to the age of 13 or 14. All of the people the Association assisted were Muslim. The Association had about 50 members who subscribed a certain amount of money, and others also donated money on an occasional basis. The annual income of the Association was as much as \$35,000 a year. It was not affiliated with any mosque, but sometimes an Imam would identify people members of the Association could help.

[22] The Claimant testified that he was the Treasurer of the Association, a job that took up about four hours a day, sometimes more. He also taught the children about the Koran for approximately four hours a week, and helped the students with their academic subjects – he could not remember how many hours a week he spent on this. He had no special training in connection with these activities and did not do any preaching.

[23] Since the term “missionary” is not defined in the OAS Act or the OAS *Regulations*, I consulted reference works, where a missionary is typically defined as “a person sent on a religious mission, especially one sent to promote Christianity in a foreign country.”¹⁰ It appears that the idea of receiving a religious assignment abroad is central to the missionary concept. In the present case, the Claimant was one of the organizers of a religious association in Egypt, where he was already living. He was not sent there by a religious organization in Canada, and he was not invited to work as a missionary by any religious authority in Egypt.¹¹ He testified, in fact, that he was in Egypt for family rather than religious reasons. Moreover, he testified that his work did not involve any significant travel, but took place in the city where he was living. In addition, the Claimant had no specialized training for his “missionary” work, and the subjects of his activity were of the same religion as himself. None of these considerations support a finding that he was engaged in missionary activity. They suggest that, while he was living outside Canada in 2007-2015, he occupied himself, in association with some friends, with good works and the religious education of low-income children. This would appear to fall outside the usual understanding of the term “missionary.”

¹⁰ The Oxford Dictionary of English (3 ed.)

¹¹ *Carota v. Canada (Department of Health and Welfare)*, [1988] F.C.J. No. 439

[24] Nevertheless, if the focus is on the substance of the work rather than its organizational and training aspects, the Association could be considered a religious organization, and the Claimant's work there had a religious and humanitarian component. Accordingly, he could perhaps be considered an "urban missionary", even though he testified that the bulk of his work was administrative rather than front-line.

[25] Without determining the question of whether the Claimant's religious and humanitarian activities met the criteria for missionary work, I turn to the question of whether he can be said to have been "employed or engaged" as a missionary. The Claimant's hours of work for the Association are relevant to this requirement. The OAS Act and the OAS *Regulations* do not state whether this work must be full-time, and if not, how many hours a week must be devoted to it in order for a claimant to qualify as a resident of Canada. It is reasonable to assume that a nominal amount of missionary activity – say an hour a week – would not be sufficient, whereas full-time work would likely meet the test. The question of the amount of time the Claimant spent on his "missionary" activities is therefore of considerable importance.

[26] Every case turns on its own facts. In this case, the only documentary evidence of the Claimant's missionary work is the certificate from the Association. I do not find that it provides persuasive evidence of substantial time spent as a missionary. First, it says only that he worked as a treasurer, undertook missionary religious activities, and supervised Qur'an memorizing programs. There is no indication of the amount of time he devoted to these duties, and whether it changed over time. Second, he testified that the Association was a group of friends and relatives, which means that the certificate was not an arm's-length document. A detailed letter from a religious leader operating at arm's length from the Claimant's friends and relatives in the Association, for example, would have been much more convincing evidence of the nature of the Claimant's missionary activities during the period in question, but such was not provided. There was nothing in the documentary evidence to support consistent work of at least 28 hours a week in "missionary" activity. The burden of proof is on the Claimant to show that he was employed or engaged as a missionary in 2007-2014, and I find that he has not met this onus because the evidence does not show that he spent significant amounts of time in this pursuit.

[27] An additional reason for doubting the Claimant's account of his time spent as a missionary is that he vigorously pursued an application for CPP disability benefits for six years, beginning in September 2010, when he applied for the benefit, and continuing through to a decision of the Appeal Division of this Tribunal in August 2016, which denied his appeal from the decision of the General Division.¹² An application for CPP disability benefits required that the Claimant show that he lacked the regular capacity because of his disability to pursue any substantially gainful occupation since - at the latest - 2010, the date of application. Yet he claimed for OAS purposes that he was working at least 28 hours a week - sometimes more - during 2007 to 2015. This is clear evidence of significant and regular work capacity (although his work was not substantially gainful). The claims are contradictory because it seems most unlikely that the Claimant could have been consistently working at least 28 hours a week, and at the same time have lacked the regular capacity to pursue any substantially gainful occupation.

[28] Taking into account the lack of persuasive documentary evidence in support of the Claimant's claim regarding the amount of time he spent on his missionary activity, and his apparently contradictory claims about his work capacity, I find he has not proven, on a balance of probabilities, that he was employed or engaged in missionary work during the period from January 2007 to July 2014.

The Claimant has not demonstrated that his ties to Canada during the disputed period constituted residency

[29] The question of residency is a factual one that requires consideration of many factors including the following:

- (a) ties in the form of personal property;
- (b) social ties in Canada;
- (c) other ties in Canada (medical coverage, driver's licence, rental lease, tax records, etc);
- (d) ties in another country;
- (e) regularity and length of stay in Canada, and the frequency and length of absences from Canada; and

¹² The Claimant supplied only partial copies of the decisions of the General and Appeal Divisions of this Tribunal; see GD11-30, GD6R-III-124, 125, 202-4.

(f) the person's mode of living, or whether the person living in Canada is sufficiently deep rooted and settled.¹³

[30] I will focus particularly on the period from October 2006 to December 2008 because this is the period the Claimant highlighted at the hearing. He specifically stated that this was not in the alternative to his claim to have been a missionary in 2007-2015, but was supplementary to that claim.

[31] The evidence indicates that the Claimant did not have a residence in Canada during the period in question. It appears that he sold his condo in Canada before leaving for Egypt on October 16, 2006. No agreement of purchase and sale was before me, but the Claimant supplied a statutory declaration of condominium ownership dated October 6, 2006,¹⁴ and testified at the hearing that he had sold the condo. There is no evidence that he paid property taxes in Canada in 2007, and he was out of the country from October 16, 2006 to November 11, 2008. He testified that he put the proceeds of the sale of the condo into GICs, and there is evidence of his purchasing GICs in large amounts on October 11, 2016.¹⁵ He testified that the money from the GICs provided support for himself and his family when he was living in Egypt. These facts show that he did not have ties in the form of a residence here at the time of his departure in October 2016.

[32] The Claimant had strong social ties to Egypt during the period in question. He testified that his wife, mother, mother-in-law and children all lived in Egypt during this period. He stated that he moved to Egypt in order to care for his mother-in-law, who was ill, and to be with his children while they were in school.¹⁶ His testimony as to his activities for the Association from 2007 to 2015 further supports strong social ties there.

[33] The Claimant made six short trips to Canada during the period from October 2006 to September 2015. The shortest was 17 days and the longest was 88 days. The length of his

¹³ *Minister of Human Resources Development v. Ding*, 2005 FC 76; *Bustamante v. Canada (A.G.)*, 2008 FC 1111

¹⁴ GD9-3; GD2-111.

¹⁵ GD6R-117, 118

¹⁶ GD1-101

absences from Canada does not support a finding of residence in Canada during the period in question.

[34] The Claimant provided evidence of ties in Canada during 2006-2008, including the following:

- Bank accounts at TD Canada Trust (since 1998) and CIBC (since 1989);¹⁷
- Ontario health card;¹⁸
- Copy of Ontario driver's licence valid to August 1, 2010;¹⁹
- Canadian passport September 2006 valid to Sept 2011;²⁰
- Income tax return information for 2006-2008;²¹
- Business account statements from CIBC from March 2007 to December 2008. He submitted that these showed that he was paying property insurance for the business and insurance for his truck and car. All insurance payments stopped in April 2008;²²
- Profit and loss statements for his business for the years 2006 and 2007. In 2007 the business had a net income of \$565.47. ²³ The Claimant testified that the business was essentially inactive after 2006 and no one was running it; and
- Five-year tax summary for his business that showed no income in 2008.²⁴

[35] The Claimant testified that he had not closed down his business because he always intended to return to Canada, and would have returned if his application for disability benefits had been granted. His intentions are a legitimate factor to consider, but are not determinative of

¹⁷ GD2-59, 91

¹⁸ GD2-65

¹⁹ GD2-108

²⁰ GD2-119

²¹ GD6R-III-142- 144

²² GD7R-17-3

²³ GD6R-III-157-163

²⁴ GD6R-III-171

the issue before me.²⁵ The major evidence for his intention to return is that he did not close down his business, but it has essentially been inactive since 2006.

[36] The evidence indicates that the Claimant's ties to Canada became more tenuous after 2008. He continued to file income tax returns through to 2015, and another Canadian passport was issued in 2011.²⁶ He stated that he lived at Xin X from July 10 to October 6, 2012, but did not provide evidence of this, and his bare assertion cannot ground a claim to residential ties with Canada during that period. He closed his business bank account in November 2009.²⁷ A Business Names Expired Report indicates that one of his two businesses was no longer in operation by April 2010.²⁸ There is no evidence of a driver's licence after 2010. He lived in Egypt for the two years after September 2012. In 2014, he spent less than a month in Canada. He left Canada in October 2014 and did not return until September 2015.²⁹

[37] The question is whether the Claimant resided in Canada from October 2006 to July 2014, or ordinarily lived here. Although he continued to have ties in Canada, as itemized in paragraphs 33 and 34 above, he did not have personal property here, and he had strong family and social ties in Egypt. I find that the Claimant has failed, on a balance of probabilities, to establish that he was a missionary during the disputed period, or that he made his home or ordinarily resided in Canada.

Payment of the Claimant's OAS pension to be effective as of October 2015

[38] I have found on a balance of probabilities that the Claimant was not resident in Canada from October 2006 to July 2014. For the same reasons, I find on a balance of probabilities that he failed to establish residence between July 2014 and September 2015. Accordingly, the Claimant had less than 20 years of residence in Canada.

[39] The parties are in agreement that the Claimant was resident in Canada after September 23, 2015. In order to qualify for an OAS pension, given that he had less than 20 years of residence in Canada, payment could begin only after he was resident in Canada prior to the day his

²⁵ *Duncan v. Canada (Attorney General)*, 2013 FC 319

²⁶ GD6R-145-155; GD11-8-20

²⁷ GD6R-III-173

²⁸ GD6R-120

²⁹ GD8-10

application was approved.³⁰ He resumed residence in Canada only in September 2015. Payment begins the month after the application was approved.³¹

CONCLUSION

[40] The Claimant is entitled to an OAS pension of 18/40^{ths} for the period from June 1988 to October 2006. Payment is to begin as of October 2015.

[41] The appeal is allowed in part.

Carol Wilton
Member, General Division - Income Security

³⁰ Section 3(2) of the OAS Act; Subsection 5(2) of the OAS *Regulations*

³¹ Subsection 8(1) of the OAS Act.