



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. A. v Minister of Employment and Social Development*, 2019 SST 1573

Tribunal File Number: GP-18-914

BETWEEN:

T. A.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Shannon Russell

Date of decision: March 12, 2019

DECISION

[1] The Claimant has resided in Canada for less than 20 years and, based strictly on his years of residency in Canada, he is not eligible to receive his OAS pension outside of Canada for more than six months plus the month of departure from Canada. The Social Security Agreement between Canada and Peru may help the Claimant reach the 20-year residency threshold for pension portability, and his eligibility under the Agreement will be assessed by the Respondent once the Claimant leaves Canada for a prolonged period of time or ceases to reside in Canada.

OVERVIEW

[2] The Claimant is a 66-year-old man who applied for an Old Age Security (OAS) pension in June 2016. The Respondent approved the Claimant's application and awarded him a partial OAS pension of 13/40ths effective June 2017 (the month after the Claimant's 65th birthday). The Claimant asked the Respondent to reconsider its decision and in doing so he explained that, after he received his approval letter, he spoke with one of the Respondent's agents and was told that his pension does not have "the portability feature".

[3] The Respondent reconsidered its decision and decided to maintain the initial award. The Respondent explained that, to receive the OAS pension outside of Canada, a pensioner needs to have resided in Canada after the age of 18 for at least 20 years. The Respondent also explained that the Government of Canada has a Social Security Agreement with the Republic of Peru and the Agreement (the Canada-Peru Agreement) might help the Claimant satisfy the 20-year residency requirement. The Respondent said it would ask its International Operations department to evaluate the applicability of that Agreement once the Claimant informs the Respondent of a "permanent or a prolonged departure from Canada"¹.

[4] The Claimant appealed the reconsideration decision to the Social Security Tribunal as he believes that, under the Agreement, his OAS pension is portable, and this should be an intrinsic feature of his pension, without him having to first inform the Respondent of a permanent or prolonged departure from Canada.

¹ Pages GD2-3 to GD2-4

PRELIMINARY MATTERS

No Charter Argument

[5] During the appeals process, the Claimant contemplated raising an argument under the *Charter of Rights and Freedoms (Charter)*. However, on March 3, 2019, the Claimant wrote to the Tribunal and explained that he had decided not to pursue a *Charter* argument².

No Summary Dismissal

[6] On January 31, 2019, the Respondent asked for this appeal to be summarily dismissed³. On March 4, 2019, the Respondent filed a Recommendation to Summarily Dismiss (which essentially reiterates the Respondent's submissions of January 31, 2019)⁴. I did not proceed by way of summary dismissal because (1) the Claimant only recently indicated that he would not be pursuing a *Charter* argument; and (2) at the time the Respondent first requested that the appeal be summarily dismissed, I had already issued a Notice of Hearing – Written Questions and Answers, and a change to the method of proceeding would have delayed this proceeding unnecessarily.

ISSUE(S)

[7] The Claimant has confirmed that he is not disputing the Respondent's findings as to his periods of residency in Canada. Instead, he simply wants to know whether he satisfies the portability requirements by virtue of the Canada–Peru Agreement⁵.

[8] To date, the Respondent has not determined whether the Canada–Peru Agreement assists the Claimant in meeting the 20-year residency requirement.

[9] I must determine whether the Claimant has resided in Canada for at least 20 years so as to meet the portability requirement. If he has not, I must determine whether the Claimant can have his pension portability assessed under the Canada–Peru Agreement.

² Page GD21-2

³ Page GD16-2

⁴ Page GD22

⁵ Page GD11-2

ANALYSIS

Pension Portability Requires 20 years of Residency in Canada

[10] Absent the applicability of a Social Security Agreement, an OAS pension is only portable (i.e. payable to a pensioner outside of Canada) if the pensioner can show that at the time of his departure from Canada or at the time he ceased to reside in Canada (whichever applies), he resided in Canada after the age of 18 for at least 20 years⁶. If a pensioner has less than 20 years of residency in Canada after the age of 18 at the time of his departure from Canada or at the time he ceased to reside in Canada (whichever applies), then his pension will be paid for six consecutive months after the month of departure or month of ceased residency and then payment is suspended⁷.

The Claimant Has Not Resided in Canada for at Least 20 Years

[11] The Respondent determined that, at the time the Claimant's OAS application was approved, the Claimant had resided in Canada for 13 years and 122 days (i.e. from August 16, 1988 to October 4, 1992 and from March 21, 2008 to May 31, 2017)⁸.

[12] Assuming, without deciding, that the Claimant has continued to reside in Canada continuously since June 2017 (the month after his 65th birthday), then he would have accumulated an additional period of residency of about 1 year, 9 months and 11 days. In total, this is just over 15 years of residency. The Claimant has therefore not resided in Canada for at least 20 years after the age of 18.

No Decision Has Been Made on the Applicability of the Canada–Peru Agreement

[13] By Notice of Hearing – Written Questions and Answers, I asked the Respondent if it would be willing to determine whether the Claimant could, by virtue of the Canada–Peru Agreement, export his pension outside of Canada. In reply, the Respondent said that, until the Claimant leaves Canada, it will not review the Claimant's file under the Canada–Peru

⁶ Subsections 9(2) and 9(4) of the *Old Age Security Act*

⁷ Subsections 9(1) and 9(3) of the *Old Age Security Act*

⁸ Page GD2-7

Agreement, as the Claimant's date of departure might affect the "requirements to benefit" from the Agreement⁹.

[14] I then asked the Respondent if it would be willing to assess the Claimant's eligibility under the Canada-Peru Agreement based on the Claimant's residency in Canada as of the date his OAS pension was approved, thereby eliminating the concern about the uncertainty of the Claimant's date of departure. In reply, the Respondent said it would not review the Claimant's eligibility for pension portability under the Canada-Peru Agreement until the Claimant leaves Canada as to do otherwise would be a "fictive application" without the necessary proof of departure¹⁰. The Respondent also said that, because the Claimant qualifies for a partial OAS pension, his file cannot at this time be assessed under the Canada-Peru Agreement, and in support of this statement, the Respondent cited excerpts from the Canada-Peru Agreement, including a provision of Article 11, which states:

If a person is not eligible for a benefit due to insufficient creditable periods under the legislation of a Party, that person's eligibility shall be determined by totalizing these periods and those specified in paragraphs 2 through 4, provided that the periods do not overlap¹¹.

[15] I agree that the Respondent is not, at this time, obligated to assess the Claimant's pension portability under the Canada-Peru Agreement. In the absence of a decision made by the Respondent under the Agreement, I have no jurisdiction to consider that matter.

CONCLUSION

[16] The appeal is dismissed.

Shannon Russell
Member, General Division - Income Security

⁹ Pages GD9-1 to GD9-3

¹⁰ Pages GD16-1 to GD16-5

¹¹ Section 1 of Article 11 of the Convention on Social Security between Canada and the Republic of Peru