



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. R. v Minister of Employment and Social Development*, 2019 SST 722

Tribunal File Number: GP-18-561

BETWEEN:

R. R.

Claimant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Patrick O'Neil

Teleconference hearing on: July 4, 2019

Date of decision: July 7, 2019

DECISION

[1] The Claimant is not entitled to an *Old Age Security* (OAS) pension.

OVERVIEW

[2] The Minister received the Claimant's application for a Canadian OAS pension under the Agreement on Social Security between Canada and Sweden on November 12, 2015¹. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for an OAS pension, the Claimant who is not a Canadian citizen must meet all the eligibility requirements set out in the *Old Age Security Act* (OASA), including having been legally resident in Canada².

ISSUE(S)

[4] Has the Claimant provided sufficient evidence to substantiate his residence in Canada was legal residence?

ANALYSIS

The Claimant has not provided sufficient evidence to substantiate his residence in Canada was legal residence.

[5] The Claimant is not a Canadian citizen. The OAS pension application required that he indicate the legal status of his residence in Canada at the time of his departure from Canada. The Claimant noted the legal status of his residence in Canada at the time of his departure from Canada was "temporary working permit".³ The Claimant indicated in his reconsideration request⁴ that a work permit valid for three years beginning July 1, 1987 was issued by the Canadian Embassy in Stockholm, Sweden. He testified he no longer has possession of the work permit. He noted the only document in his possession that verifies the permit conditions is a

¹ GD2 pages 12-18

² Section 4 OASA

³ GD2 page 13

⁴ GD2 page 5

letter sent by his employer to the Canadian Embassy in Sweden in support of his application for a temporary work permit.

[6] The Claimant noted in his OAS application that he entered Canada May 30, 1987. He testified he departed Canada June 24, 1989 as the company he worked for in Canada decided in 1989 to relocate from Montreal to Ottawa. He did not wish to relocate to Ottawa. The Claimant said he searched without success for a copy of the work permit. He believes immigration authorities kept the permit when he entered Canada in May 1987 or when he departed in June 1989. He has not made any enquiries with his past employer as to the possibility the employer has a copy of the work permit.

[7] The Claimant requested a status verification from Citizenship and Immigration Canada (CIC). CIC advised they were unable to locate any record of the Claimant's resident status in Canada⁵.

[8] The Claimant provided the Minister with a copy of his employer's letter to the Canadian Embassy dated February 9, 1987⁶, an undated letter from Movers International⁷, a letter from Movers International dated June 14, 1989⁸, and a copy of his Application for Temporary Entry to Canada dated February 25, 1987⁹. He submitted in his Reasons for Appeal that these documents should prove he was legally in Canada when he left Canada¹⁰.

[9] The Claimant submitted he should not have to save documents, including passport and travel documents, to prove what the Minister requires to determine his eligibility to an OAS pension from Canada. Canadian authorities should be responsible for saving such information. He said the Minister should be required to substantiate he is not entitled to an OAS pension.

[10] A person who was not a Canadian citizen on the day before that person ceased to reside in Canada is eligible for an OAS pension only if that person was legally resident in Canada on

⁵ GD2 page 24

⁶ GD1 page 13

⁷ GD1 page 15

⁸ GD1 page 14

⁹ GD1 pages 11-12

¹⁰ GD1 pages 9-10

the day before that person ceased to reside in Canada¹¹. Legal residence for the purposes of Section 4(1)(b) of the OASA means that person was lawfully in Canada pursuant to the immigration laws of Canada on the day before the day that person ceased to reside in Canada¹².

[11] The Minister asked the Claimant to provide documentary evidence to confirm he was legally resident in Canada on the day before he ceased to reside in Canada, specifically a copy of the Temporary Work Permit valid on the date of his departure from Canada. The Claimant has not provided such evidence. There is no documentary evidence the work permit was issued, or if issued, the conditions and term of such permit. The correspondence from the moving company is relevant as to the Claimant's physical present in Canada, but is of no relevance as to the issue of whether he was legally resident in Canada pursuant to the immigration laws of Canada. The Claimant's assertion he was legally resident in Canada pursuant to the immigration laws of Canada on the day before he ceased to reside in Canada is not sufficient evidence of legal residence.

[12] I find the Claimant has not established he satisfied the legal residence requirement for eligibility for an OAS pension. As he has not satisfied the legal status requirement, it is not necessary for me to determine whether he resided in Canada for a sufficient number of years to receive an OAS pension under the Agreement on Social Security between Canada and Sweden.

[13] The onus is on the Claimant to establish on the balance of probabilities his entitlement to an OAS pension¹³. The Claimant mistakenly asserted the onus is on the Minister to prove he was not legally resident in Canada pursuant to the immigration laws of Canada on the day before he ceased to reside in Canada.

CONCLUSION

[14] The appeal is dismissed.

Patrick O'Neil
Member, General Division - Income Security

¹¹ Section 4(1)(b) OASA

¹² Paragraph 22(1) OAS Regulations

¹³ *De Carolis v. Canada (Attorney General)*, 2013 FC 366