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

Citation: *G. S. v Minister of Employment and Social Development*, 2019 SST 1358

Tribunal File Number: GP-19-378

BETWEEN:

G. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

Decision by: Shannon Russell

Teleconference hearing on: August 20, 2019

Date of decision: September 30, 2019

Canada

DECISION

[1] The Claimant is not eligible for an Old Age Security (OAS) pension.

OVERVIEW

[2] The Claimant is a 68-year-old man who lives in the United States (U.S.). He has lived in the U.S. for most of his life.

[3] In December 2014, the Claimant applied for an OAS pension. In his application, he reported that he began living in Canada on February 6, 2014. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

PRELIMINARY MATTERS

[4] Most appeals do not involve post-hearing documents. This one does, and so I will explain what happened.

[5] During the hearing I told the Claimant that, in light of one of his arguments, I would be considering a Federal Court decision called *Stiel*[1]. The Claimant was understandably unaware of the decision, and so I helped him find it on the internet, and then I allowed him a period of 20 days after the hearing to make written submissions on its relevance and applicability.

[6] On August 21, 2019, the Claimant wrote to the Tribunal and asked for a certified written copy of the teleconference hearing as well as an extension of his deadline for filing his written comments on the *Stiel* decision[2]. On August 23, 2019, I wrote to the parties and I explained that because the Tribunal only provides audio recordings of hearings (and not written transcriptions), I was including a CD of the audio recording of the hearing. I also said that I was extending the Claimant's deadline to September 25, 2019[3]. Finally, I said that if the Respondent (who was not

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[1] *Canada (Minister of Human Resources Development)* v. *Stiel*, 2006 FC 466
[2] Page GD13-1
[3] Pages GD14-1 to GD14-2

represented at the hearing) wanted to comment on the *Stiel* decision, the Respondent could do so, provided the Respondent filed its submissions by September 25, 2019.

[7] The Claimant filed post-hearing submissions on September 9, 2019[4], September 12, 2019[5] and September 25, 2019[6]. The Respondent did not file any post-hearing submissions.

ISSUE

[8] I must decide whether the Claimant is eligible for an OAS pension.

ANALYSIS

Eligibility Requirements for an OAS Pension

[9] To receive an OAS pension, a person must[7]:

- Be at least 65 years of age;
- Have legal resident status in Canada; and
- Have resided in Canada after the age of 18.

[10] A full OAS pension is paid to individuals who have resided in Canada for at least 40 years after the age of 18[8]. If a person has not resided in Canada for at least 40 years, the legislation provides for the possibility of a partial pension. To be eligible for a partial pension, a person must have resided in Canada for at least ten years[9]. So, for example, if a person resided in Canada after the age of 18 for ten years (and also meets the other eligibility requirements), then the person will be eligible for a partial OAS pension of 10/40ths (or one-quarter of a full OAS pension).

[4] Pages GD16-1 to GD16-55
[5] Pages GD17-1 to GD17-4
[6] Pages GD18-1 to GD18-25
[7] Sections 3 and 4 of the OAS Act
[8] Subsection 3(1) of the OAS Act
[9] Subsection 3(2) of the OAS Act

[11] If a person stops living in Canada and wants to receive an OAS pension while living in another country (as is the case with the Claimant), then the person must have resided in Canada after the age of 18 for at least 20 years[10].

[12] If a person does not have enough years of residency in Canada to qualify for an OAS pension but the person has established ties in a country with which Canada has a social security agreement, then the social security agreement may help the person to qualify for an OAS pension.

[13] Canada currently has a social security agreement with the U.S[11]. From this point forward, and unless otherwise indicated, I will simply refer to the social security agreement between Canada and the U.S. as the Agreement.

Why the Claimant Seeks To Rely on the Agreement

[14] The Claimant acknowledges that, based solely on his "actual" years of residency in Canada, he does not qualify for an OAS pension. He testified that he resided in Canada from February 6, 2014 to either May 1, 2016 or May 1, 2017 (he could not remember which year he left Canada).

[15] Even if the Claimant did not leave Canada until May 2017, it is clear he does not qualify for an OAS pension based solely on his actual periods of residency. The most he has is three years of residency in Canada.

[16] The Claimant must therefore turn to the Agreement to see if it is of assistance to him.

What the Agreement Says About Qualifying for an OAS Pension

[17] The Agreement says that if a person is not entitled to an OAS pension because he has not accumulated sufficient periods of residency in Canada, then his eligibility for the pension shall

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[10] Paragraph 3(2)(b) and subsection 9(4) of the OAS Act

[11] *Agreement Between the Government of Canada and the Government of the United States of America with Respect to Social Security*, proclaimed in force on February 9, 1982.

be determined by totalizing his periods of residency in Canada with his quarters of coverage credited under U.S. laws, provided that the periods do not overlap[12].

[18] The Agreement also says that a quarter of coverage credited under U.S. laws shall be considered as three months of residency in Canada[13].

[19] Finally, the Agreement cautions that not all quarters of coverage are to be included in the totalization. We are only to include a quarter of coverage credited under U.S. laws if the coverage was on or after January 1, 1952 and after the age at which periods of residence in Canada are credited[14]. Periods of residence in Canada are credited after the age of 18[15].

The Claimant Does Not Have Enough Quarters of Coverage to Meet the 20-Year Residency Threshold

[20] I explained previously that in order to receive an OAS pension outside of Canada, a person must have resided in Canada for at least 20 years. The Claimant does not have 20 years of "actual" residence in Canada. The Claimant also does not have enough quarters of coverage under U.S. laws to allow him to meet the 20-year residency threshold by virtue of the totalization provisions of the Agreement.

[21] The U.S. Social Security Administration provided a record of the Claimant's coverage under that program, and the record shows that the Claimant has a total of nine quarters of coverage, as follows[16]:

Year	Quarters of Coverage (represented by the letter "C")	Total Quarters for the Year
1966	NNCN	1
1967	CCCN	3
1968	NNNC	1
1969	NNCC	2
2009	CCNN	2

[12] Paragraphs 1 and 2 of Article VIII, Chapter 2 of the Agreement
[13] Paragraph 2(a) of Article VIII, Chapter 2 of the Agreement
[14] Paragraph 2(a) of Article VIII, Chapter 2 of the Agreement
[15] Section 3 of the OAS Act
[16] Page GD2-37

[22] Despite having nine quarters of coverage, I am unable to recognize all nine. This is because the Agreement only allows me to recognize a quarter of coverage if it is after the date the Claimant reached age 18.

[23] The Claimant was born in November 1950 and so he reached age 18 in November 1968. This means that I cannot recognize the Claimant's four quarters of coverage from 1966 to 1967. The Respondent has also discounted the Claimant's quarter of coverage in 1968. It may be arguable that the Claimant's quarter of coverage in 1968 should be included in his totalization calculation, as it corresponds with the period the Claimant reached age 18. However, nothing turns on whether the quarter of coverage in 1968 is included in the totalization because at most the Claimant has 5 quarters of coverage that can be recognized under the Agreement, and this is not enough for him to meet the 20-year residency threshold. Five quarters of coverage is equivalent to 15 months of residency.

Why The Claimant Has So Few Quarters of Coverage

[24] The reason the Claimant does not have more quarters of coverage under the U.S. social security program is because, for many years, the Claimant worked for the U.S. railroad, and the railroad has its own pension program.

[25] When the Claimant began the appeal process, he argued that the Agreement allows him to include, for totalization purposes, his periods of coverage under the railroad retirement program. He said that his railroad record shows that he earned 370 creditable months of coverage and he said that this is equivalent to approximately 120 quarters of coverage under the U.S. social security program.

[26] The Respondent rejected the Claimant's argument, and told him that contributions to the railroad retirement program are not included in the Agreement[17]. The Respondent explained that it can only recognize periods of coverage if they are confirmed by the U.S. Social Security

[17] Page GD2-3

Administration, and the Claimant's contributions to the railroad retirement program were not included on the record of coverage provided by the U.S. Social Security Administration.

[27] During the hearing, the Claimant focused on a new argument (which I will address shortly), and so I asked him if he is still arguing that the Agreement allows him to include his periods of coverage under the railroad retirement program. The Claimant said that he is no longer making that argument and that he acknowledges that the Agreement does not recognize, for totalization purposes, periods of coverage under the railroad retirement program. I will, therefore, focus on the Claimant's new argument.

The Claimant Wants to Combine His Quarters of Coverage with the Quarters of Coverage Credited to his Late Spouse's Account

[28] The Claimant's new argument is that the Agreement allows him to combine his quarters of coverage under the social security program with the quarters of coverage made by his late spouse. As proof that his late spouse had quarters of coverage under the U.S. social security program, the Claimant provided letters from the Social Security Administration dated February 28, 2019[18] and March 12, 2019[19] showing that the U.S. Social Security Administration has awarded him a monthly widow's benefit effective February 2018.

[29] In the Claimant's notice of appeal, he said that the letter of February 28, 2019 places him "100% within the requirements of the joint US/CA Social Security Treaty"[20]. In his letter of June 4, 2019, he said that the award letters from the Social Security Administration show that the Administration "clearly and undisputedly changed Appellant Simpson's Coverage History"[21]. At the hearing, the Claimant said that the Agreement states that if a person has lived in Canada for at least one year, then that person can rely on their social security benefit as coverage for the purposes of the residency requirement. He also said that the totalization provision of the Agreement does not say that he cannot combine his quarters of coverage with those of his late spouse. The Claimant reiterated this last point in his written submissions of September 9, 2019 wherein he wrote "nowhere within the Treaty is there any reference, "implied or expressed" that

[18] Pages GD1-12 and GD1-13
[19] Pages GD6-3 to GD6-6
[20] Page GD1-5
[21] Page GD10-5

states, an Applicant for an OAS Pension can not combine his or her own contributions with his/her late spouse(s) contributions to meet the threshold outlined in the Treaty…"[22]

[30] I do not have any documentary evidence showing how many quarters of coverage the Claimant's late spouse had and so, from a purely practical standpoint, I am not able to determine whether the Claimant's late spouse had enough quarters of coverage that, when combined with the Claimant's own quarters, enables the Claimant to meet the 20-year residency threshold.

[31] That concern aside, even if I was satisfied that the Claimant's late spouse had enough quarters of coverage to enable the Claimant to meet the 20-year threshold, I see no legislative basis for the Claimant being able to combine his quarters of coverage with those of his late spouse. To put it another way, I can only do what the law allows me to do, and the law does not allow me to combine a person's quarters of coverage with those of their late spouse.

[32] The *Stiel* decision from the Federal Court supports my conclusion that the Agreement does not allow the Claimant to combine his quarters of coverage with those of his late spouse.

[33] The *Stiel* case involves a claimant (Ms. Stiel) who was seeking a partial OAS pension based on the Canada / U.S. Agreement. Ms. Stiel had lived in Canada for 14 years (from May 1959 to June 1973) and then moved to the U.S. She acknowledged that, based solely on her years of residency in Canada, she did not qualify for a pension. Ms. Stiel also acknowledged that she never contributed to the U.S. social security program. However, she argued that the Agreement was nonetheless helpful to her because her husband had contributed to the U.S. social security program for 22 years (from 1973 to 1994) and she felt that his contributions provided the appropriate "coverage" for her, particularly since she received a spouse's benefit as a result of his contributions. In support of her argument, Ms. Stiel referred to the definition of "period of coverage" in Article I(6) of the Agreement. That provision states:

> "Period of coverage" means,
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> A period of payment of contributions or a period of earnings from employment or self-employment, as defined or recognized as a period of coverage by the laws under which such period has been completed, or any similar period insofar as it is

[22] Pages GD16-11 and GD16-12

> recognized by such laws as equivalent to a period of coverage; a period of residence shall not be recognized as a period of coverage.

[34] The court held that Ms. Stiel was not permitted, for totalization purposes, to use her husband's contributions to the U.S. social security program. The court explained that, although the term "period of coverage" is used in Article VIII of the Agreement, the term is used exclusively for Canada Pension Plan calculations (and not for OAS entitlement purposes). The court also explained that Article VIII (2)(a) is the relevant provision for OAS entitlement purposes and that provision refers to "quarter[s] of coverage" and not to "periods of coverage". The court held that the term "quarter of coverage credited under United States laws" is a very specific term, imported from the U.S. legislation, and the use of such a precise term that is clearly defined in U.S. law is a strong indicator of Parliament's intent. The court reviewed what the term "quarter of coverage" means in U.S. laws and determined it means coverage obtained through individual (personal) employment earnings. In other words, for totalization purposes, a quarter of coverage must have been earned by the person seeking the OAS pension.

[35] I know that the Claimant believes he is permitted to combine his quarters of coverage with those of his late spouse because the Agreement does not say he cannot. It is true that the Agreement does not expressly say the Claimant cannot do what he is proposing. However, the Federal Court's decision is that, when properly interpreted, the Agreement does not allow two parties to combine their quarters of coverage.

[36] I am obliged to follow the Federal Court's interpretation of the Agreement. This is because the Federal Court is a higher court than this administrative Tribunal.

[37] The Claimant submits that the fact situation in *Stiel* is the "polar opposite" of his situation. First, the Claimant points out that in *Stiel* the claimant did not have *any* quarters of coverage of her own whereas he has a few. He adds that the Agreement does not say that a person must have "contributed the minimum amount" required under U.S. laws and so in a situation like his *any* contribution would trigger the ability to combine quarters of coverage.

[38] I acknowledge that in *Stiel,* the claimant was seeking to rely solely on her husband's coverage whereas in this case the Claimant is seeking to combine his quarters of coverage with

those of his late spouse. However, I do not consider this to be a compelling argument for distinguishing the *Stiel* decision. My reading of *Stiel* is that nothing turns on whether a claimant has no quarters of coverage or whether a claimant has insufficient quarters of coverage. The law is the same for both situations. The term "coverage" for OAS entitlement purposes means a quarter of coverage (and not a period of coverage) and a quarter of coverage means coverage obtained individually (or personally) by virtue of the individual's employment earnings. Because the *Stiel* decision clarifies that the quarters of coverage must belong to the person seeking the OAS pension, there is no value in me addressing the Claimant's argument about "any" contribution being sufficient to trigger the ability to combine quarters. There is no ability to combine quarters of coverage, regardless of how few (or many) quarters the claimant has.

[39] Second, the Claimant submits that the *Stiel* decision should be distinguished because Ms. Stiel is not a Canadian citizen whereas he is. The court did not mention Ms. Stiel's citizenship in its decision, and so I do not know that Ms. Stiel is (or was) not a Canadian citizen. Regardless, I do not see how her citizenship is relevant, as citizenship is not a component of the Agreement's totalization provision.

[40] Third, the Claimant submits that Ms. Stiel never contributed to the "Canadian Social Security Program" (or the U.S. program) whereas he contributed to both. I assume that by "Canadian Social Security Program", the Claimant means the Canada Pension Plan (as the OAS program is not a contributory program). However, again, the court did not say anything about whether Ms. Stiel contributed to the Canada Pension Plan and so I do not know whether the Claimant's assertions are true. In any event, it is not relevant whether Ms. Stiel contributed to the CPP because, unless a person is making CPP contributions while working in the U.S., CPP contributions is not an eligibility consideration for OAS purposes.

[41] The Claimant also submits that the *Stiel* decision is "clearly flawed" because the court failed to consider or chose to ignore Article VI(1) of the Agreement. Article VI(1) states:

> 1. Except as otherwise provided in this Article, where a person referred to in Article V(2) is subject to the laws of Canada, or the comprehensive pension plan of a province, during any period of residence in the territory of the United States, that period of residence, in respect of that person, his spouse and dependants who reside with him and who are not

> employed or self-employed during that period, shall be treated as a period of residence in Canada for the purposes of the Old Age Security Act.

[42] I do not see how Article VI(1) is helpful to the Claimant. This provision is specific to those referred to in Article V(2). Article V(2) is about a person whose employer sends them to work for the same employer in the territory of the other contracting state. I do not have any evidence showing the Claimant was sent to work in the United States by a Canadian employer.

[43] Throughout the hearing (and also in his post-hearing submissions), the Claimant objected to me considering the *Stiel* decision. He likened the *Stiel* decision to evidence and told me that I am legally bound to only consider the evidence before me and that I cannot produce evidence of my own. He says that I have made the case for the Respondent and lost my neutrality.

[44] I do not see merit in the Claimant's argument. As I explained during the hearing, a decision from the Federal Court is not evidence. It is law, and I am required to consider it and apply it when it is relevant. This is so even if a party does not bring the decision to my attention.

[45] The Claimant also submitted that the *Stiel* decision is not valid because the court was "out of line" when it interpreted the Agreement without the participation of the other signatory to the Agreement (the U.S. government). In support of his argument, the Claimant referred to Article 40 of the Vienna Convention on the Law of Treaties, and specifically to paragraph two:[23]

> 2. Any proposal to amend a multilateral treaty as between all the parties must be notified to all the contracting States, each one of which shall have the right to take part in:
>
> (a) the decision as to the action to be taken in regard to such proposal;
>
> (b) the negotiation and conclusion of any agreement for the amendment of the treaty.

[46] I do not have the jurisdiction to decide the validity of a Federal Court's decision. Even if I did, I could not accept the Claimant's argument.

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[23] Page GD16-33

[47] First, Article 40 (above) is about amendments to multilateral treaties. The *Stiel* decision is an interpretation (not amendment) of the Canada / U.S. Agreement. Moreover, the Agreement is bilateral (not multilateral).

[48] Second, the Canada / U.S. Agreement is part of Canadian law. Its enabling statute is the OAS Act[24]. Interpretation of that law falls within the jurisdiction of the Tribunal[25]. In 2006 (the year *Stiel* was decided), Tribunal decisions on OAS matters were subject to judicial review by the Federal Court[26].

[49] Third, the Agreement does not require the participation of both governments in matters of appeal. Article XVII of the Agreement states:

> 1. A written appeal of a determination made by the agency of one Contracting State may be validly filed with an agency of either Contracting State. The appeal shall be dealt with according to the appeal procedure of the laws of the Contracting State whose decision is being appealed (emphasis mine).

[50] The *Stiel* appeal was dealt with according to the appeal procedure of the laws of Canada, which complies with Article XVII.

CONCLUSION

[51] The Claimant is not eligible for an OAS pension. The appeal is dismissed.

Shannon Russell
Member, General Division - Income Security

[24] Section 40 of the OAS Act
[25] For a detailed explanation of how that jurisdiction was derived at the time the *Stiel* decision was rendered, see *Minister of Human Resources Development* v. *The Estate of Mildred Dublin*, 2006 FC 152
[26] Subsection 18(1) of the *Federal Courts Act* (as it read in 2006)