



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *AB v Minister of Employment and Social Development*, 2019 SST 1700

Tribunal File Number: GP-19-226

BETWEEN:

**A. B.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

---

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

---

Decision by: Antoinette Cardillo

Teleconference hearing on: September 12, 2019

Date of decision: September 30, 2019

## **DECISION**

The Appellant is not eligible to an Old Age Security (OAS) OAS pension or the Guaranteed Income Supplement (GIS).

## **OVERVIEW**

[1] The Appellant's application for the Old Age Security (OAS) pension was date stamped by the Respondent on July 20, 2011<sup>1</sup>. The Minister approved the Appellant's OAS pension initially at the rate of 25/40 effective in January 2013, then the Minister amended the effective date of the Appellant's eligibility to the OAS pension to February 2012. He was issued a retroactive payment in the amount of \$3731.56 from February 2012 to December 2012. He was also entitled to the Guaranteed Income Supplement (GIS).

[2] After a review, the Minister determined that the Appellant was never eligible to receive OAS benefits. Consequently, a reimbursement of all benefits received was requested in the amount of \$81,550.72. The Appellant requested a reconsideration of the Minister's decision. The Minister denied the reconsideration request and the Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

## **PRELIMINARY MATTER**

[3] The Appellant failed to appear at the hearing on September 12, 2019. Thirty minutes past the hearing's start time, he had not connected to the hearing. Therefore, according to subsection 12(1) of the Tribunal's Regulations, I could proceed in the party's absence if I was satisfied that the Appellant received the notice of the hearing. In addition to the notice of hearing being sent twice to the Appellant (the first one was returned to the Tribunal), several voice mail messages were left to advise of the date and time of the hearing. The Appellant had contacted the Tribunal via telephone during the course of the year. His address was also confirmed.

## **ISSUE**

---

<sup>1</sup> GD2-3

[4] The issue in this appeal is whether the Appellant is entitled to a partial pension pursuant to the *Old Age Security Act (OAS Act)*.

## **ANALYSIS**

### ***i. OAS Act and Regulations***

[5] Subsection 3(2) of the *OAS Act* provides that to receive a partial pension, an applicant must have resided in Canada for at least 10 years if he or she resides in Canada on the day before the application is approved. An applicant who resides outside of Canada on the day before the application is approved must prove that he or she had previously resided in Canada for at least 20 years.

[6] Subsection 11 (7)(d) of the *OAS Act* provides that no supplement may be paid to a pensioner for any month throughout which the pensioner is not resident in Canada, having ceased to reside in Canada, either before or after becoming a pensioner, six months before the beginning of that month.

### ***ii. Documentary evidence***

[7] Pursuant to the case law, the residence analysis involves a fluid approach, with each case determined on its own facts (*Canada (Minister of Human Resources and Development) v. Ding*, 2005 FC 76 (“*Ding*”). In *Ding*, the court set out factors to be taken into account in determining whether a person makes his or her home in and ordinarily lives in Canada. In the present appeal, I find these factors to be relevant and helpful in determining the issue before me. They are as follows:

- a) ties in the form of personal property (bank accounts, business, furniture, automobile, credit card);
- b) social ties (membership with organizations or associations, professional membership);
- c) other fiscal ties to Canada (hospital and medical insurance coverage, driver's license, property tax statements, public records, immigration and passport 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;

f) the lifestyle of the person or his/her establishment in Canada.

[8] The Appellant arrived in Canada as a refugee on September 28, 1986 and became a permanent resident on May 16, 1988<sup>2</sup>. He indicated on his OAS application that he resided in Canada from his arrival in Canada in 1986.

[9] Based on the evidence, the Appellant has been abroad for long periods between June 15, 2008 and January 12, 2018.

[10] A report from the Canada Border Services Agency (CBSA)<sup>3</sup> indicates that the Appellant entered Canada on one or two occasions each year from 2005 until 2017.

[11] The Appellant submitted a Canadian passport valid from 2009 to 2014 issued in X<sup>4</sup>.

[12] The information on file, provides that the Appellant was outside Canada on the following dates<sup>5</sup>:

- from June 15, 2008 to June 6, 2009;
- from August 6, 2009 to July 6, 2011;
- from October 18, 2011 to February 17, 2012;
- from May 14, 2012 to December 24, 2012;
- from May 4, 2013 to October 15, 2013;
- from January 14, 2014 to June 10, 2014;
- from September 13, 2014 to May 16, 2015;
- from August 13, 2015 to April 12, 2016;
- from July 16, 2016 to April 15, 2017;
- from July 15, 2017 to August 15, 2017; and
- from November 14, 2017 to April 14, 2018.

---

<sup>3</sup> GD1-15

<sup>4</sup> GD2-21

<sup>5</sup> GD2-52 and GD2-77 to 91

[13] The Appellant's health records from April 1<sup>st</sup>, 2010 to September 22, 2017<sup>6</sup> indicate that he did not seek medical care in Canada from 2010 to 2011 but sought care periodically between 2012 and 2017:

- between February and May 2012;
- between December 2012 and April 2013;
- between October 2013 and January 2014;
- between June 2014 and September 2014
- between May 2015 and August 2015
- between April 2016 and July 2016; and
- between April 2017 and September 2017.

[14] He was also hospitalized in Somalia in November 2018<sup>7</sup>.

[15] The Appellant's bank records show activity during certain periods of the year from August 2011 to July 2017. More precisely, there are frequent deposits and withdrawals:

- between February and April 2012;
- between January 2013 and May 2013;
- between October 2013 and January 2014;
- between July 2014 and September 2014;
- between June 2015 and August 2015 ;
- between May 2016 and July 2016; and
- between May 2017 and July 2017.

[16] Based on an investigation report from the Minister's representatives and a questionnaire sent to the Appellant dated September 22, 2017, the Appellant does not rent or own a home or have property in Canada. When in Canada, he stays with a friend. He pays no utility services, his friend does and the lease is in his friend's name<sup>8</sup>. It is unclear which address he uses, at times it seems to be his ex-wife's address and other times his sister.

---

<sup>6</sup> GD2-66 to 73

<sup>7</sup> GD1-1

<sup>8</sup> GD2-46 and GD2-137

[17] In a letter dated March 3, 2018<sup>9</sup>, the Appellant submitted that he is unable to stay in Canada for longer than 3 to 4 months at a time due to pre-existing medical conditions and stated that being away from Canada ensures that he will be taken care of by his family and he will not have access to alcohol. In addition, two letters from the Appellant's doctor dated September 11, 2017 and May 27, 2018<sup>10</sup> provide that the Appellant's benefits from being in Somalia given his health conditions.

*iii. Residence v. presence*

[18] The evidence has demonstrated that, when in Canada, the Appellant does not have any personal property, strong social or fiscal ties or that his lifestyle is representative of an individual having established himself in Canada as a resident. The travel dates clearly demonstrate that the Appellant is abroad for long periods of times on a yearly basis since 2008. During the dates he was abroad, there was no medical care sought in Canada and virtually no bank transactions except some deposits and a few bank machine withdrawals.

[19] I therefore find that the evidence does not demonstrate that the Appellant resided in Canada pursuant to subsection 21(1)(a) of the *OAS Regulations* and therefore is not eligible to a partial OAS pension as provided by subsection 3(2) of the *OAS Act* and the GIS as provided by subsection 11(7)(d) of the *OAS Act*.

**CONCLUSION**

[20] The appeal is dismissed.

Antoinette Cardillo  
Member, General Division - Income Security

---

<sup>9</sup> GD2-34

<sup>10</sup> GD1-8/9