



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *W. A. v Minister of Employment and Social Development*, 2019 SST 1498

Tribunal File Number: GP-18-2606

BETWEEN:

**W. A.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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

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Decision by: Pierre Vanderhout

Teleconference hearing on: December 17, 2019

Date of decision: December 19, 2019

## **DECISION**

[1] The Claimant's birth date, for Old Age Security ("OAS") purposes, is X, 1953.

## **OVERVIEW**

[2] The Claimant was born in Ethiopia, but left in 1987 due to political turmoil. He married his wife in Greece in September 1987, and arrived in Canada as a landed immigrant in March 1988. The Minister received the Claimant's first OAS pension application in December 2016. On that application, the Claimant gave a birth date of X, 1952. However, the Minister denied the application, finding that the Claimant's birth date was X, 1953. The Minister concluded that the Claimant's application was too early. The Minister maintained that decision on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] The Claimant filed a second OAS pension application in October 2018. On that application, he gave his birth date as X, 1953. The Minister granted his application and his 30/40<sup>th</sup> OAS pension started in October 2018. However, he is proceeding with this appeal of his first application, to establish a birth date of X, 1952, for OAS pension purposes. If he succeeds, he would get a 29/40<sup>th</sup> OAS pension, as of October 2017.

## **ISSUE**

[4] What is the Claimant's birth date, for OAS purposes?

## **ANALYSIS**

[5] There is evidence supporting both X, 1952, and X, 1953, as the Claimant's birth date. I need to determine which one applies for OAS purposes.

### **What is the Claimant's birth date, for OAS purposes?**

[6] For the reasons that follow, the Claimant's birth date for OAS purposes is X, 1953.

[7] Section 18 of the OAS Regulations sets out three ways to determine an applicant's age for the OAS Pension: (1) using information from the Canada Employment Insurance Commission ("CEIC"); (2) using a birth certificate or a certified copy of one; or (3) if a birth

certificate is not available, on the basis of any other evidence and information about the applicant's age.<sup>1</sup> A fourth method may override any of the above: using the age determined under the *Canada Pension Plan* ("CPP"). However, this is not mandatory.<sup>2</sup>

[8] The first two methods do not apply in this case. I do not see any information from the CEIC, nor did the Claimant file an original birth certificate (or a certified copy). This means I could base his age on either "other evidence" or the age determined under the CPP. Before considering the "other evidence", I will look at his age under the CPP.

*The Claimant's age under the Canada Pension Plan*

[9] In January 2017, the Minister told the Claimant that he would soon receive his CPP retirement pension. Although the Claimant used a 1952 birth date on his application for the CPP pension, he also enclosed a Canadian Citizenship card with a 1953 birth date. The Minister said it would rely on the 1953 birth date, as that was the date on the citizenship card.<sup>3</sup>

[10] While the Claimant wanted to use a 1952 birth date for his CPP pension, he was not successful in that regard.<sup>4</sup> His birth date for CPP purposes is therefore X, 1953. The Minister could also rely on that date for OAS purposes. However, I will instead base my decision on the "other evidence" permitted by the OAS Regulations. This lets me consider all of the Claimant's evidence, and particularly the unique circumstances leading to this appeal.

*Summary of the "other evidence"*

[11] Three uncertified documents support a X 1952 birth date: a copy of the Claimant's Ethiopian birth certificate, a copy of his Ontario Driver's Licence, and his 2015 tax return summary from the Canada Revenue Agency ("CRA").<sup>5</sup>

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<sup>1</sup> These are listed in ss. 18(2), 18(2.1), and 18(2.2) of the *Old Age Security Regulations*.

<sup>2</sup> Section 19 of the *Old Age Security Regulations*.

<sup>3</sup> GD2-41

<sup>4</sup> GD2-23

<sup>5</sup> GD1-5, GD2-10, and GD2-20

[12] Five documents support a X 1953 birth date: a copy of the Claimant's 1988 Record of Landing in Canada<sup>6</sup>, his Canadian Citizenship card<sup>7</sup>, his Canadian Passport<sup>8</sup>, his Marriage Certificate (and translation)<sup>9</sup>, and a copy of his Ontario Health Card<sup>10</sup>. The Minister said the Claimant's Certificate of Canadian Citizenship and Marriage Certificate (and translation) were certified copies, while the other three documents were uncertified.<sup>11</sup> However, I did not see a certified copy of the Claimant's Canadian Citizenship card in the Tribunal file. The only copies of that document were uncertified.

[13] The Claimant has provided different accounts for the origin of the error. In November 2017, he said that the 1953 birth date in his 1988 Record of Landing was the "first human mistake that was done".<sup>12</sup> However, this statement is inconsistent with his 1987 Marriage Certificate, which also shows a 1953 birth date.<sup>13</sup>

[14] At the hearing, the Claimant gave a different explanation. He said he was imprisoned in Ethiopia during the political unrest in the 1980s. He said his friends bailed him out but urged him to leave the country. An Ethiopian passport was quickly obtained. Because of the urgency of leaving the country, he said he did not look closely at the passport. He was just happy to be free and able to leave the country. In Greece, he applied for UN refugee status and married his wife. However, he said he did not notice that the Greek authorities used a 1953 birth date on his Marriage Certificate. He said the Greek authorities used his Ethiopian passport to complete the marriage documents. Once again, he said he just wanted freedom in North America and was happy to leave. He said he finally noticed the error when he arrived in Canada.

[15] The Claimant never referred to an incorrect Ethiopian passport before the hearing. However, he made multiple references to the loss of his luggage upon arrival at the Toronto airport in 1988. He said the luggage contained his original birth certificate, his marriage album,

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<sup>6</sup> GD1-8 and GD2-11

<sup>7</sup> GD1-7 and GD2-10. Note that this document also says X, 1953, rather than X, 1953. However, the birth date is still in X 1953. All of the other documents, including those showing a 1952 birth, refer to X.

<sup>8</sup> GD1-6 and GD2-9

<sup>9</sup> GD2-21 and GD2-22

<sup>10</sup> GD1-7 and GD2-10

<sup>11</sup> GD3-5

<sup>12</sup> GD2-26

<sup>13</sup> GD2-22

and his clothes.<sup>14</sup> At the hearing, he said he only had a copy of the original birth certificate because he made a copy in Greece and carried it in his bible “just in case”.

[16] The Claimant never said what became of his original Ethiopian passport. Despite relying on an error in that passport, the Claimant has not produced a copy of it. He appears to have had that passport when he landed in Canada in 1988.<sup>15</sup> As the Claimant says he never paid attention to the incorrect dates on the Greek marriage certificate, his Ethiopian passport, or other key documents when they were made, I cannot place too much reliance on this version of events. This is particularly problematic without seeing the Ethiopian passport in question, and with the Claimant not mentioning it at all until the hearing itself.

[17] The Claimant has also advanced (or not appealed) a 1953 birth date for other applications to the Minister. He did not appeal the deemed 1953 date for his CPP retirement pension, and he filed a second OAS pension application in October 2018 that also used the 1953 date. However, as he seems to have been motivated by financial need (to start his OAS pension while this appeal was still in progress), I don’t place too much reliance on it.

[18] It may be frustrating for the Claimant to have different dates on his important documents. He may be caught in a vicious circle, where he cannot solve one problem before fixing the other problem (and *vice versa*). At the hearing, he said he did not realize there were competing birth dates until he applied for the OAS pension. However, in April 2014, he told the Minister he “noticed that it was incorrect many years ago but didn’t do anything about it.”<sup>16</sup> This contradicts his oral evidence, as he did not apply for the OAS pension until December 2016.<sup>17</sup>

*Findings on the Claimant’s date of birth for OAS purposes*

[19] The Claimant’s suggestion that his Ethiopian passport had an incorrect birth date indirectly brings his Ethiopian birth certificate’s reliability into question. His Ethiopian passport also appears to support a 1953 birth date, although he never produced it. As noted above, more documents appear to support a 1953 birth date, and the only certified document supports a 1953

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<sup>14</sup> See, for example, GD1-1, GD2-23, GD2-26, GD2-30, and GD2-36.

<sup>15</sup> See GD2-11, where an Ethiopian passport (including passport number and expiry date) is referenced.

<sup>16</sup> GD2-36

<sup>17</sup> GD2-14

birth date as well. While 1953 appears to be more likely than 1952 from a documentation perspective, I must consider all of the evidence. This includes the Claimant's oral evidence.

[20] I cannot determine the Claimant's year of birth with 100% certainty. There is evidence to support his birth in either 1952 or 1953. However, I do not need to be 100% convinced of the correct year. The burden of proof is on the Claimant, as he is the person appealing the reconsideration decision. This means he must prove "on a balance of probabilities" that he was born in 1952. In other words, he must show that a 1952 birth is more likely than a 1953 birth.

[21] Ultimately, I am not convinced on a balance of probabilities that the Claimant was born in 1952. I cannot place enough reliance on his oral evidence to overcome the multiple documents suggesting a 1953 birth date. He raised evidence about his Ethiopian passport for the first time at the hearing, despite many opportunities to provide it in the past, but also failed to produce that passport as evidence. His oral evidence also contradicted his earlier statements, such as his 2014 statement that he was aware of the problem "many years ago". There are also other inconsistencies: in November 2017, he said the first "human mistake" was in his 1988 Record of Landing. This contradicts the September 1987 Greek Marriage Certificate that shows a birth date of 1953. However, at the hearing, he said the first error was in the Ethiopian passport issued before he arrived in Greece.

[22] As the Claimant has not persuaded me on a balance of probabilities that he was born on X, 1952, his birth date for OAS purposes must continue to be X, 1953. While this means that some documents are inconsistent with his OAS birth date, I only have the authority to determine his birth date for OAS purposes.

#### *Other considerations*

[23] The Claimant asked for a compassionate approach to this appeal. He emphasized the political situation in Ethiopia, which required him to leave quickly and without regard for details in his official documents. He has also recently encountered financial difficulties in Canada, which forced him to stay in a motel and in a homeless shelter. He described his current housing arrangements as unstable, as he may have to leave by the end of January 2020.

[24] The Claimant also explained that the Ethiopian embassy in Canada could not provide him with an original birth certificate (or a certified copy). He apparently needs to return to Ethiopia for that. However, he has not been there for 23 years, and is still afraid to go back. He said he would pursue the original birth certificate if he ever went to Ethiopia again.

[25] I take judicial notice of the fact that Ethiopia suffered from civil war, drought, and famine during the 1980s. I accept that the Claimant's departure from Ethiopia may not have been orderly. However, the Tribunal is created by legislation. It only has the powers granted to it by its governing statute. As a Tribunal Member, I have to interpret and apply the provisions as they appear in the OAS Act and its Regulations. I cannot waive or change them, even if they seem unfair in a particular situation. Nor can I unreasonably interpret the wording of the OAS Act and its Regulations.<sup>18</sup> The OAS Act and its Regulations do not allow for decisions on a compassionate basis. Although I have great sympathy for what has happened to the Claimant, his appeal cannot legally succeed.

## **CONCLUSION**

[26] The appeal is dismissed.

Pierre Vanderhout  
Member, General Division - Income Security

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<sup>18</sup> See, generally, the Supreme Court of Canada's decision in *R. v. Conway*, 2010 SCC 22.