



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. K. v Minister of Employment and Social Development*, 2020 SST 366

Tribunal File Number: GP-19-1514

BETWEEN:

G. K.

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: January 28, 2020

Date of decision: February 14, 2020

DECISION

[1] The Claimant is not eligible for the Guaranteed Income Supplement (GIS) earlier than April 2017.

OVERVIEW

[2] The Claimant is a 79-year-old man who lives in Canada. He has not always lived in Canada. His first period of residence was from September 1965 to April 1985.

[3] In September 2005 (while living outside of Canada), the Claimant applied for an Old Age Security (OAS) pension. The Respondent approved his application and awarded him a partial pension of 19/40ths. Because the Claimant had less than 20 years of residency in Canada, the social security agreement between the Government of Canada and the Republic of Cyprus was used to help the Claimant qualify for his pension.

[4] In February 2016, the Claimant travelled to Canada and applied for the GIS. More than one year later, the Respondent denied the application because the Respondent determined that the Claimant had not re-established residency in Canada in February 2016¹. The Respondent maintained its decision at the reconsideration level of adjudication².

[5] After the Respondent issued its reconsideration decision, the Respondent awarded the Claimant the GIS benefit effective April 2017 (based on a subsequent application). The Respondent explained that the Claimant was eligible for the GIS as of April 2017 because he had re-established residency as of that date.

[6] The Claimant appealed to the SST. He asked for his GIS to be paid retroactive to February 2016 and he questioned the calculation of his monthly GIS payment.

[7] In May 2019, a Tribunal Member dismissed the appeal. That member decided that the Claimant was not eligible for the GIS between February 2016 and April 2017 because

¹ Page IS2-19

² Pages IS2-23 to IS2-24

throughout that time the Claimant was residing in the United States and not Canada. That member also decided that the amount of the Claimant's GIS monthly benefit was correct.

[8] The Claimant appealed the decision to the SST Appeal Division (AD). The AD allowed the appeal, finding that the General Division applied the wrong legal test when it decided the issue of the Claimant's residence. The AD referred the matter back to the General Division for reconsideration.

The Claimant is no longer challenging the amount of his GIS monthly payment

[9] In order for the Respondent to calculate the monthly amount of a person's GIS payment, the Respondent must first determine what the Claimant's income is. This is because the GIS is an income-tested benefit. The Respondent determined that the Claimant's income includes a pension from the Republic of Cyprus.

[10] When the Claimant appealed to the SST, he disagreed with the Respondent's determination that he has been receiving a foreign pension.

[11] In December 2019, the Respondent provided the Tribunal with a document it had received from the Republic of Cyprus. The document shows that the Claimant has been receiving a monthly benefit from Cyprus since January 2014³.

[12] During the hearing, the Claimant told me that in light of the recent document from the Republic of Cyprus, he no longer wishes to challenge the amount of his GIS.

ISSUE(S)

[13] I must decide whether the Claimant re-established residency in Canada at any point from February 2016 to and including March 2017.

ANALYSIS

³ Pages IS3-3 to IS3-6

[14] The GIS is a monthly benefit that is paid to a person who receives the OAS pension, has little to no income, and resides in Canada⁴.

[15] The OAS legislation distinguishes between the concepts of residency in Canada and presence in Canada. A person resides in Canada if he makes his home and ordinarily lives in any part of Canada⁵. A person is present in Canada when he is physically present in any part of Canada⁶.

[16] There are several factors that are relevant to deciding whether a person is making their home and ordinarily living in Canada. These factors include, but are not limited to:

- Ties in the form of personal property (i.e. house, business, furniture, automobile, bank account, credit card);
- Social ties in Canada (i.e. membership with organizations or associations or professional memberships);
- Other ties in Canada (i.e. hospital and medical insurance coverage, driver's license, rental, lease, loan or mortgage agreement, property tax statements, electoral voter's list, life insurance policies, contracts, public records, immigration and passport records, provincial social services records, public and private pension plan records, federal and provincial income tax records);
- Ties in another country;
- Regularity and length of stay in Canada and the frequency and length of absences from Canada; and
- The person's mode of living (i.e. whether his living in Canada is substantially deep rooted and settled).

⁴ Paragraphs 11(7)(b) and (d) of the *Old Age Security Act*

⁵ Paragraph 21(1)(a) of the OAS Regulations

⁶ Paragraph 21(1)(b) of the OAS Regulations

The Claimant did not re-establish residency in Canada in February 2016 or before April 2017

[17] The Claimant testified that he moved from Cyprus to the United States (Florida) in 2015. After spending some time in Florida, he decided that he did not want to live there. He did not like it, he found it too expensive, he could not find a job, and he did not have any coverage for his medical expenses.

[18] In early 2016, he decided to move to Canada. He drove from Florida to Toronto and arrived in Toronto in early February 2016. Along the way, his car broke down (in South Carolina) and so he left it there and rented a car for the remainder of the drive. With him, he brought five suitcases of personal possessions.

[19] He had no friends or relatives in the Toronto area, but upon his arrival he met a woman who owns a rooming house. He rented a room from her (at X Avenue) and then began the process of trying to make Canada his home. During the first week of February 2016, the Claimant opened a bank account and obtained a credit card with the Royal Bank of Canada (RBC)⁷. He also applied for his QPP retirement pension and the GIS⁸.

[20] The Claimant says that the Respondent told him it would take 35 weeks to process his GIS application. This posed a problem for him because he needed the GIS to be able to live in Toronto. When he realized that he could not afford to stay in Toronto without the GIS, he decided that he would return to Florida to live with his son until his GIS application was approved.

[21] The Claimant says that he made arrangements with his landlady to store most of his suitcases in the rooming house. He then flew from Toronto to Florida and moved in with his son.

[22] I accept that in February 2016, the Claimant established *some* residential ties to Canada. For example, he opened a bank account and obtained a credit card with RBC, he found a room to rent and he reportedly paid rent for the month of February 2016. I also accept that the Claimant

⁷ Page IS1-2

⁸ Page IS2-2

likely intended to make Canada his home and that he returned to the United States because he could not afford to live in Canada without the GIS. However, I do not accept that the Claimant was making his home and ordinarily living in Canada in February 2016 or any point to and including March 2017.

[23] First, a person's intention to reside in Canada is a relevant consideration, but it is not determinative. I cannot find that a person resides in Canada based solely on that person's intention⁹.

[24] Second, throughout the entire period from February 2016 to the end of March 2017, the Claimant only spent about two weeks in Canada. He arrived in Canada on or about February 2, 2016 and he appears to have left Canada on February 14, 2016¹⁰. I asked the Claimant whether he returned to Canada after his departure in February 2016 and before April 2017, and the Claimant said he did not. He explained he was living in the United States and did not return to live in Canada before April 2017. When I pointed out that the evidence includes passport stamps showing entries into Canada on June 28, 2016¹¹ and November 1, 2016¹², the Claimant said that if he was in Canada it was simply because he was "passing through". I asked the Claimant if he travelled to Canada to board a flight, and he acknowledged he probably did. He could not remember where he travelled to, but he thought he may have gone to Cyprus. Regardless of where the Claimant was spending his time after February 2016 (whether mostly in Florida or mostly in Cyprus), I cannot equate a two-week stay in Canada with a finding that the Claimant was making his home and ordinarily living in Canada.

[25] Third, after the Claimant left Canada in February 2016, he likely continued to represent himself to be a resident of the United States. I say this because in March 2016 the Claimant was issued a driver's license by the State of Florida¹³.

⁹ *Canada (Minister of Human Resources Development) v. Ding*, 2005 FC 76

¹⁰ There is a passport stamp showing that the Claimant entered the United States on February 14, 2016 (page GD2-15)

¹¹ Page GD2-15

¹² Page GD2-16

¹³ Page IS1-3

[26] Fourth, the Claimant has made statements that are inconsistent with his argument that he was residing in Canada before April 2017. For example, in September 2017 the Claimant wrote that he is a resident of Canada “as of April 25, 2017”¹⁴. Also, during the hearing the Claimant told me that between February 2016 and April 2017, he was “living” in the United States.

[27] Fifth, the Claimant did not have a mode of living in Canada that was settled in February 2016 or at any time before April 2017.

[28] Sixth, the preponderance of the evidence shows that the Claimant did not re-establish residency in Canada until April 2017. April 2017 is when the Claimant returned to Canada¹⁵, and began spending most of his time in Canada. April 2017 is also when the Claimant began paying monthly rent for his room at X Avenue in Toronto. (The Claimant confirmed during his testimony that, except for the month of February 2016, he did not pay any rent in Canada prior to April 2017). Shortly after his return to Canada in April 2017, the Claimant found a doctor and a pharmacist, as evidenced by their letters showing that he became their patient on May 11, 2017¹⁶. May 2017 is also the month the Claimant was issued an Ontario identification card¹⁷. A few months later (in July 2017), the Claimant was issued an Ontario health card¹⁸.

The Claimant has misunderstood the law about when GIS benefits are payable

[29] The Claimant submits that the law in Canada is such that a Canadian citizen is automatically entitled to the GIS for up to six months after leaving Canada. Despite what the Claimant believes, this is not what the law says. The law says that if a person who is receiving the GIS leaves Canada or stops residing in Canada, then benefits will be paid for six months after the month of departure¹⁹. The Claimant was not receiving the GIS in February 2016 and so the rule about six months of payments does not apply to him.

¹⁴ Page IS2-25

¹⁵ The Claimant’s landlord wrote a letter confirming that the Claimant has been her tenant since April 27, 2017 (page IS2-22). Also, the Claimant’s bank records show a bank transaction in Canada on April 28, 2017 (page GD2-19)

¹⁶ Pages GD2-30 and GD2-31

¹⁷ Page IS2-26

¹⁸ Pages GD2-12 and IS2-26

¹⁹ Paragraphs 11(7)(c) and (d) of the *Old Age Security Act*

The Social Security Agreement between Canada and the United States is not applicable

[30] The Claimant submits that the *Agreement between the Government of Canada and the Government of the United States of America with respect to Social Security* (the Agreement) is helpful to him. He says that the Agreement states that a Canadian citizen is entitled to all their Canadian benefits while they live in the United States. I asked the Claimant if there is a specific provision or provisions of the Agreement that he relies on, and he said there is not. He said that he simply relies on the summary of the Agreement he printed from a government website²⁰.

[31] I have read the Agreement, and I do not agree with the Claimant's interpretation of it.

[32] First, I cannot find a provision or provisions in the Agreement that state what the Claimant asserts.

[33] Second, the Agreement states that if a person is not entitled to the payment of a benefit because he has not accumulated sufficient periods of residence, then entitlement of that person to the payment of that benefit shall be determined by totalizing the periods of residency in Canada with the periods of coverage credited under United States laws, provided the periods do not overlap²¹. The *accumulation* of residence is relevant to such benefits as the OAS pension and the Allowance. It is not relevant to the GIS. The Claimant was not denied the GIS because he had not *accumulated* sufficient periods of residence. He was denied the GIS because he was not residing in Canada at the time he wanted his benefit to be paid.

[34] Third, the Agreement also states that notwithstanding any other provision of the Agreement, the GIS shall be paid to a person who is outside of Canada only to the extent permitted by the *Old Age Security Act*²². As I explained previously, the *Old Age Security Act* states that if a person is receiving the GIS and then leaves Canada that person is only entitled to receive the benefits for six months after the month of departure. If Parliament did not intend for the Agreement to be used as a way to extend a person's payments beyond six months, then I

²⁰ Pages IS1-5 to IS1-9

²¹ Article VIII, paragraphs (1) and (2) of the Agreement

²² Article VIII, paragraph 3(b) of the Agreement

cannot see how it would have intended for the Agreement to be used as a way to “deem” residency for GIS entitlement purposes.

No jurisdiction to decide the Claimant’s QPP matter

[35] In February 2016, the Claimant applied to Retraite Québec for his QPP retirement pension. His application was approved and he was awarded the pension retroactive to March 2015²³. The Claimant wants his QPP retirement pension to be paid retroactive to 2005²⁴. I do not have any jurisdiction to decide the Claimant’s QPP matter. The QPP is administered by Retraite Québec, and it has its own appeals process.

No jurisdiction to decide claims of erroneous advice or administrative error

[36] The Claimant submits that Service Canada has caused him to lose benefits because:

- when he applied for his OAS pension in 2005, Service Canada did not tell him that he could apply for his QPP retirement pension and Service Canada did not notify QPP to let them know he was a pensioner.
- when he applied for his GIS in February 2016, Service Canada told him that it would take 35 weeks to process his application. This was an unreasonable delay and resulted in him having to move back to the United States.
- Service Canada did not tell him that if he left Canada he would not be entitled to the GIS.

[37] There is a provision in the legislation that allows the Respondent to investigate claims of erroneous advice and/or administrative error²⁵. However, the law is clear that I (as a Tribunal Member) have no jurisdiction to consider allegations of erroneous advice and/or administrative error. Only the Respondent has such authority²⁶.

²³ Pages GD1C-7 to GD1C-8 and page GD4-2

²⁴ Testimony and page GD1C-9

²⁵ Section 32 of the *Old Age Security Act*

²⁶ *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278; *Canada (MHRD) v. Mitchell*, 2004 FC 437. The issue of the Tribunal having no jurisdiction in matters of erroneous advice / administrative error was also addressed by the AD in its decision of September 12, 2019 (at paragraphs 13 and 14).

The Claimant is not entitled to interest or damages

[38] The Claimant asks me to award him interest and \$100,000.00 in damages. He says the damages are to compensate him for all the stress this matter has caused him. He believes that the stress caused him to have a nervous breakdown and heart attacks.

[39] I am sympathetic to the Claimant's circumstances. However, I do not have jurisdiction to award interest or damages²⁷. This is true even if I had found that the Claimant re-established residency in Canada in February 2016.

CONCLUSION

[40] The appeal is dismissed.

Shannon Russell
Member, General Division - Income Security

²⁷ *Minister of Human Resources Development v. Flanagan-Barnes*, Federal Court Order, 2003 (T-704-02); *Minister of Human Resources Development v. Esler*, 2004 FC 1567; and *Minister of Human Resources Development v. Dublin Estate*, 2006 FC 152