



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. K. v Minister of Employment and Social Development*, 2020 SST 367

Tribunal File Number: GP-19-1542

BETWEEN:

**K. K.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

---

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

---

Decision by: Pierre Vanderhout

Claimant represented by: Theresa Goba

Date of decision: April 8, 2020

**[Corrigendum date: May 6, 2020]**

## **DECISION**

[1] The Claimant is entitled to a 10/40<sup>th</sup>s Old Age Security (“OAS”) pension, effective December 2019.

## **OVERVIEW**

[2] The Claimant was born in July 1936. She lived in Korea until July 2002, when she first entered Canada. She then spent roughly equal periods in each country, for the next several years. She eventually spent more time in Canada and became a Canadian citizen in 2017. On August 25, 2016, she applied for an OAS pension. The Minister denied the application initially and on reconsideration. In the reconsideration decision, the Minister admitted that the Claimant had resided in Canada since February 2012, but denied that she had established Canadian residency before then. This meant she did not yet have enough Canadian residency to qualify for an OAS pension. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] To qualify for [**an OAS**] pension, the Claimant must meet the requirements set out in the *Old Age Security Act* (“OAS Act”). For a partial OAS pension, she must have at least ten years of Canadian residency. She must also reside in Canada if she has less than twenty years of Canadian residency.<sup>1</sup>

## **ISSUES**

[4] Can this matter proceed without a hearing?

[5] If so, does the Claimant have any additional residency in Canada?

[6] If the Claimant has additional residency in Canada, what is the impact on her potential entitlement to an OAS pension?

## **ANALYSIS**

[7] A person resides in Canada if she makes her home and ordinarily lives in any part of Canada. Residence is not the same as presence. A person is present in Canada if she is physically

---

<sup>1</sup> Subsection 3(2) of the *Old Age Security Act*.

present in any part of Canada.<sup>2</sup> The Claimant has clearly been present in Canada for periods before February 2012. The question is whether she resided in Canada. I will first determine if I can answer this question without a hearing.

**Can this matter proceed without a hearing?**

[8] For the reasons that follow, I find that I may proceed with an “on the record” decision. It is not necessary to hold a hearing, and I can base my decision on what has already been filed.

[9] The *Social Security Tribunal Regulations* provide guidance on how the Tribunal should conduct proceedings. In particular, the Tribunal must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.<sup>3</sup> This means I should consider the Claimant’s particular situation when deciding whether to have a hearing. Holding a hearing is not a strict requirement.<sup>4</sup>

[10] The Notice of Appeal form said the Tribunal would decide whether to hold a hearing. The form also says the Tribunal would decide on the type of hearing. The form asked the Claimant which type of hearing she would prefer. Various types of written and oral hearings were listed. One of the choices was an “on the record” process, where the Tribunal would decide the appeal only on the information submitted to the Tribunal. The Claimant had no preference for any of the potential ways to decide her appeal.<sup>5</sup>

[11] The Claimant’s circumstances are exceptional. She is now 83 years old. She only speaks Korean.<sup>6</sup> On March 30, 2020, her son told the Tribunal that she had cancer and was in the hospital. She was dying and could not participate in a hearing. Her son wondered if the matter could proceed in her absence. However, her son is not her representative.

[12] The Claimant does not live in the same province as her representative.<sup>7</sup> The Claimant’s son has had trouble reaching her representative, and could not leave messages on her phone. Her

---

<sup>2</sup> Paragraphs 21(1)(a) and (b) of the *Old Age Security Regulations*.

<sup>3</sup> Paragraph 3(1)(a) of the *Social Security Tribunal Regulations*.

<sup>4</sup> Section 21 of the *Social Security Tribunal Regulations*, for example.

<sup>5</sup> GD1-2

<sup>6</sup> GD1-2 and GD6-15 to GD6-16

<sup>7</sup> GD6-18

representative also does not appear to know about her current situation.<sup>8</sup> The current COVID-19 pandemic complicates matters further. It is unlikely that an oral hearing would add significantly to the Tribunal's knowledge of the Claimant's circumstances.

[13] Considering these factors, I find that the appeal should proceed in the quickest and most informal way possible. This means rendering a decision based on information already submitted to the Tribunal. Fortunately, the parties now appear to agree on the Claimant's period of residency in Canada. I will explore this in more detail below.

### **Does the Claimant have any additional residency in Canada?**

[14] For the following reasons, I find that the Claimant has been resident in Canada since November 14, 2009.

[15] Before appealing to the Tribunal, the Claimant maintained that she had accumulated periods of residence in Canada since her first arrival in July 2002. However, these periods were often interrupted by similar periods spent in Korea.<sup>9</sup> When she appealed to the Tribunal, she affirmed that she had first entered Canada in July 2002, and always intended to make Canada her home.<sup>10</sup> Of course, mere intention to reside in a country does not equate to actual residence.<sup>11</sup>

[16] More importantly, the Claimant's appeal letter asked for her period of residence in Canada to start on November 14, 2009. She based this request mainly on a 23-month stay in Canada that began on November 14, 2009. This was much longer than any previous stay in Canada, and was much longer than any recent stay in Korea. On the Notice of Appeal itself, the Claimant added, "I decided to make Canada my permanent residence on November 14, 2009."<sup>12</sup>

[17] I am satisfied that the Claimant's position, when she appealed to the Tribunal, was that her Canadian residency should start on November 14, 2009. This appears to have been her representative's position as well, in an August 2019 telephone call with the Minister.<sup>13</sup> In the

---

<sup>8</sup> GD6-13 to GD6-14

<sup>9</sup> GD2-6 to GD2-7, for example.

<sup>10</sup> GD2-44

<sup>11</sup> *Canada (MHRD) v. Ding*, 2005 FC 76.

<sup>12</sup> GD1-3, GD2-38, and GD2-44

<sup>13</sup> GD6-7

meantime, the Minister investigated the Claimant's situation. In its March 2020 submissions, the Minister accepted that the Claimant had been resident in Canada since November 14, 2009.<sup>14</sup> This is exactly what the Claimant is requesting from the Tribunal.

[18] The Minister and the Claimant are now taking the same position on her residency in Canada. There is evidence to support the position taken. As a result, I find that the Claimant has been resident in Canada since November 14, 2009. I note that the parties' agreement on the only real issue in this appeal once again strongly supports issuing a decision "on the record", rather than proceeding with an unnecessary hearing.

**What is the impact of the Claimant's additional residency on her potential entitlement to an OAS pension?**

[19] The Claimant still resides in Canada. For applicants residing in Canada, a partial OAS pension is payable after accumulating 10 full years of Canadian residency.<sup>15</sup> The Claimant had just over 10 years of Canadian residency by the end of November 2019. This means she is entitled to start receiving a partial OAS pension, equivalent to 10/40<sup>ths</sup> of a full OAS pension, in December 2019.<sup>16</sup>

**CONCLUSION**

[20] The Claimant had established ten years of Canadian residency, as of November 14, 2019. This means she is entitled to a 10/40<sup>ths</sup> partial OAS pension, starting in December 2019.

[21] The appeal is allowed.

Pierre Vanderhout  
Member, General Division - Income Security

---

<sup>14</sup> GD6-10

<sup>15</sup> Subsection 3(2) of the *Old Age Security Act*.

<sup>16</sup> Subsections 3(3) and 3(4) of the *Old Age Security Act*, and section 5 of the *Old Age Security Regulations*.