



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. G. v Minister of Employment and Social Development*, 2020 SST 636

Tribunal File Number: GP-19-1837

BETWEEN:

R. G.

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: April 7, 2020

Date of decision: April 29, 2020

DECISION

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

OVERVIEW

[2] The Claimant was born in Guyana in August 1942, and he is now 77 years old. He immigrated to Canada on March 4, 1976 and obtained Canadian citizenship in 1980¹.

[3] He applied for an OAS pension in August 2007 and again in September 2016. The Respondent denied each application, both at the initial and reconsideration levels of adjudication.

[4] The Claimant appealed a reconsideration decision of September 2018 to the Social Security Tribunal (SST or Tribunal).

[5] A Tribunal Member heard the Claimant's appeal in April 2019. That member decided that the Claimant was not eligible for an OAS pension.

[6] The Claimant appealed that decision to the SST Appeal Division. In October 2019, the Appeal Division allowed the appeal, finding that the General Division had erred in law and failed to observe a principle of natural justice. The Appeal Division referred the matter back to the General Division for a *de novo* hearing, and ordered that the appeal be heard by a different member.

PRELIMINARY MATTERS

The hearing took place during a challenging time

[7] The hearing took place in a challenging time. Because of COVID-19 and its related restrictions, many Canadians, including Tribunal staff, are working from home. This has put a great strain on telephone networks, and on the Tribunal's ability to send and receive documents by mail or courier.

¹ Pages AD1-7, AD1-10, and AD1-17

[8] The Claimant participated in the hearing from Guyana. No one from the Respondent's office attended the hearing.

[9] I decided to proceed with the hearing despite the fact that no one was there to represent the Respondent. I did this for three reasons. First, I was satisfied that the Respondent received notice of the hearing. Second, the Respondent wrote to the Tribunal on January 10, 2020 and said that a representative would not be attending the hearing. Third, I had no reason to believe that the Respondent later changed its mind about participating in the hearing.

Late-Filed Documents

[10] This appeal was originally scheduled to be heard on March 10, 2020. During that hearing, the Claimant told me that he had never received a large bundle of documents that the Respondent had filed with the Tribunal in November 2019. I adjourned the hearing, so that the Tribunal office could send those documents to the Claimant and so that the Claimant could review them and comment on them.

[11] After receiving the documents, the Claimant filed further written submissions with the Tribunal. His submissions were received on March 20, 2020².

[12] Although the Claimant's submissions were filed after the filing deadline of January 21, 2020, I told the Claimant that I would accept them into the record. I thought it was only fair to do so, as the Claimant had only recently received and reviewed the large bundle of documents filed by the Respondent in November 2019.

[13] After the hearing of April 7, 2020, I wrote to the Respondent and explained that I had accepted the Claimant's most recent submissions into the record. I said that if the Respondent wanted an opportunity to comment on the submissions, the Respondent could do so provided the Tribunal received the written comments by April 23, 2020³.

[14] The Respondent did not file any written comments by April 23, 2020 and did not ask for an extension of time to file the written comments. I thus proceeded to render my decision in this

² Pages IS3-1 to IS3-14

³ Pages IS4-1 to IS4-2

matter.

This appeal is about the Claimant's OAS application of 2016

[15] The Claimant has applied twice for the OAS pension. Here is a brief summary of the appeal history of each application.

	Initial Decision	Request for Reconsideration	Reconsideration Decision	Appeal to Tribunal
OAS Application of 2007	May 13, 2009 ⁴	January 20, 2015 ⁵	June 3, 2016 ⁶	N/A
OAS Application of 2016	June 7, 2017 ⁷	July 17, 2017 ⁸	September 6, 2018 ⁹	December 7, 2018 ¹⁰

[16] The Claimant told me that he wants me to adjudicate his 2007 application. I explained to the Claimant that I get my jurisdiction from the reconsideration that is appealed to the Tribunal. The reconsideration decision that was appealed to the Tribunal is the decision of September 2018, which is a decision about the Claimant's 2016 application. I explained to the Claimant that if he wants to pursue an appeal of his 2007 application, then we could adjourn the hearing so that he can ask for a late appeal of his first application. I also explained however that the legislation

⁴ Page IS2-54

⁵ Page IS2-62. The Claimant's representative explained in an earlier letter of September 2014 that the Claimant never received the initial decision of May 2009 (page GD2-13). The Respondent appears to have accepted that argument.

⁶ Page IS2-76

⁷ Page GD2-8

⁸ Page GD2-24

⁹ Page GD2-25

¹⁰ Page GD1-1

states that an appeal cannot be brought more than one year after the day on which the reconsideration decision is communicated to the claimant¹¹. The Claimant chose to proceed with the hearing as scheduled.

ISSUE(S)

[17] I must decide whether the Claimant has resided in Canada for a sufficient number of years to qualify for an OAS pension.

ELIGIBILITY REQUIREMENTS

[18] To receive an OAS pension, a person must¹²:

- be at least 65 years of age;
- have legal resident status in Canada; and
- have resided in Canada after the age of 18 for a sufficient number of years.

[19] A full OAS pension is paid to individuals who have resided in Canada for at least 40 years after the age of 18¹³. If a person has not resided in Canada for at least 40 years, the legislation provides for the possibility of a partial pension. A partial pension is paid to a person who has resided in Canada for at least 10 years¹⁴. So, for example, if a person resided in Canada after the age of 18 for 10 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).

¹¹ Subsection 52(2) of the *Department of Employment and Social Development Act*

¹² Sections 3 and 4 of the *Old Age Security Act*

¹³ Paragraph 3(1)(c) of the *Old Age Security Act*

¹⁴ Subsection 3(2) of the *Old Age Security Act*

[20] If a person stops living in Canada and wants to receive an OAS pension while living in another country, then the person must have resided in Canada after the age of 18 for at least 20 years¹⁵.

[21] 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 Canada. A person is present in Canada when he is physically present in any part of Canada¹⁶.

[22] 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 to¹⁷:

- 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 lifestyle and degree of establishment in Canada is substantially deep rooted and settled).

¹⁵ Paragraph 3(2)(b) and subsection 9(4) of the *Old Age Security Act*

¹⁶ Subsection 21(1) of the *Old Age Security Regulations*

¹⁷ *Canada (Minister of Human Resources Development) v. Ding*, 2005 FC 76

ANALYSIS

There is a period of undisputed residency - March 4, 1976 to January 12, 1991

[23] The Respondent has accepted that the Claimant resided in Canada from March 4, 1976 to January 12, 1991¹⁸. I see no reason to interfere with this finding. The Claimant's record of Canada Pension Plan (CPP) contributions shows that he was contributing to the CPP throughout most of this period of time¹⁹.

The Claimant stopped residing in Canada in September 1992

[24] The Respondent submits that the Claimant stopped residing in Canada on January 12, 1991. The Respondent explained that, even though the Claimant reported that he moved to Guyana on September 21, 1992, the earliest passport stamp available shows an entry into Guyana on January 12, 1991, and after that the Claimant travelled between the two countries regularly²⁰.

[25] The Claimant told me that he has never given up his residency in Canada.

[26] I find that the Claimant stopped residing in Canada, but I do not agree that this happened on January 12, 1991. The Claimant's statement of CPP contributions shows that he was doing *some* work in Canada in 1991. His earnings in 1991 were not high (\$6,607), but they were slightly higher than his previous year's earnings of \$4,844. I think it is reasonable to infer that the Claimant's earnings in 1991 are indicative of more than just 12 days of work in Canada.

[27] As for when the Claimant stopped residing in Canada, the evidence shows that it was likely on September 14, 1992.

[28] First, although the Claimant was travelling regularly to Guyana in 1991, his stays in Guyana were not overly long. His passport stamps show that from October 1990 (the earliest

¹⁸ Page GD2-8 and IS2-56

¹⁹ The Claimant had valid contributions to the CPP in 1976, 1978 to 1982, 1985 to 1987, 1990 and 1991 (page IS2-3)

²⁰ Page IS1-2

passport in evidence) to September 1992, the Claimant was in Guyana or another foreign country as follows²¹:

- From at least October 18, 1990 to October 26, 1990 (Guyana)²²
- January 12, 1991 to March 8, 1991 (Guyana)²³
- May 2, 1991 (foreign country)²⁴
- May 31, 1991 to June 21, 1991 (Guyana)²⁵
- October 11, 1991 to November 1, 1991 (Guyana)²⁶
- June 5, 1992 to June 19, 1992 (Guyana)²⁷
- September 14, 1992 to October 21, 1992 (Guyana)²⁸

[29] Second, the Claimant does not have any contributions to the CPP after 1991²⁹, which means he was not working in Canada after that date.

[30] Third, the Claimant reported in his applications of 2007³⁰ and 2016³¹ that he began living in Guyana in September 1992³². During the hearing, the Claimant suggested that I should not place a lot of significance on what he reported in his applications because he answered the

²¹ The dates below coincide with the dates documented at page IS2-47, which has not been disputed by the Claimant.

²² The earliest passport in evidence is a Canadian passport that was issued to the Claimant in Guyana on October 18, 1990 (page AD1-19). This passport shows the Claimant left Guyana on October 26, 1990 (page AD1-21).

²³ The Claimant's passport stamps show he entered Guyana on January 12, 1991 (page AD1-21) and left Guyana on March 8, 1991 (page AD1-22).

²⁴ Page AD1-22 (the name of the country is illegible).

²⁵ The passport stamps show the Claimant entered Guyana on May 31, 1991 (page AD1-22) and left Guyana on June 21, 1991 (page AD1-22).

²⁶ The passport stamps show the Claimant entered Guyana on October 11, 1991 (page AD1-22) and left Guyana on November 1, 1991 (page AD1-22).

²⁷ The passport stamps show the Claimant entered Guyana on June 5, 1992 (page AD1-22) and left Guyana on June 19, 1992 (page AD1-22).

²⁸ The passport stamps show the Claimant entered Guyana on September 14, 1992 (page AD1-22) and left Guyana on October 21, 1992 (page AD1-24)

²⁹ Page IS2-3

³⁰ Page IS2-6

³¹ Page GD2-5

³² Although the Claimant reported that he arrived in Guyana on September 21, 1992, his passport shows he actually entered Guyana on September 14, 1992.

questions on the application “loosely”. He said that when he answered the questions on the applications, he was answering as a person who was not familiar with the law. I do not find this argument to be compelling. The application asks the applicant to list all the places the applicant has lived from age 18 and the application says that the applicant should not include periods when the applicant was outside of Canada for less than six months at a time. I think it is reasonable to infer that when a person is asked to identify the places where they have *lived*, they are going to put their mind to circumstances that are more than mere visits to another country. Moreover, the Claimant reported in a Questionnaire of December 2008 that he had furniture shipped to Guyana in 1992³³. This, combined with the lengthy period of time the Claimant reported he was living in Guyana (September 1992 to 2004)³⁴ is not consistent with a finding that the Claimant was making his home and ordinarily living in Canada on or after September 14, 1992.

[31] Fourth, the Claimant acknowledged during his testimony that September 1992 marked a time in his life when he started spending more time away from Canada and more time in Guyana.

[32] Fifth, there is some significance attached to the date of September 1992. The Claimant testified that he remembers September 1992 well because he travelled to Guyana to observe the general elections of October 1992. He said the elections resulted in a change of government and that he knew people in the new government. Because of his connections, he was offered a job and he started that job with the government in November 1992.

[33] Sixth, the Claimant reported in his applications of 2007 and 2016 that he worked in Guyana from November 1992 to 2004³⁵.

The Claimant’s residency in Canada is not protected by paragraph 21(4)(a) of the OAS Regulations

[34] The Claimant submits that after September 1992 he was never absent from Canada for more than one year and therefore his residency in Canada is protected by paragraph 21(4)(a) of the OAS Regulations.

³³ Page IS2-42

³⁴ Page IS2-6

³⁵ Pages IS2-6 and GD2-5

[35] Paragraph 21(4)(a) states that if a person who is a resident of Canada is absent from Canada for a period of time that is temporary in nature and does not exceed one year, then the absence shall be deemed not to have interrupted that person's residence or presence in Canada.

[36] This provision is only helpful to those who were residing in Canada at the time of the absence. I have found that the Claimant stopped residing in Canada in September 1992 and so his absences from Canada are not protected by paragraph 21(4)(a).

The Claimant's employment for the government of Guyana cannot be counted as residence in Canada

[37] The Claimant testified that in late 1992, after the Guyana national elections, he began working at the Ministry of Finance of Guyana, and he says that job was financed by the United Nations Development Program (UNDP). The Claimant further says that because the job was financed by the United Nations, his residency in Canada is protected.

[38] Paragraphs 21(4)(c) and 21(5)(a) of the OAS Regulations state that if a person who is a resident of Canada is absent from Canada because the person was employed by the United Nations or one of its specialized agencies, then the absence shall be deemed not to have interrupted that person's residence or presence in Canada, provided the person had in Canada a permanent place of abode to which he intended to return or maintained in Canada a self-contained domestic establishment, and he returned to Canada within six months after the end of the employment out of Canada.

[39] I do not find these provisions helpful to the Claimant. First, I do not have any corroborating evidence showing that the Claimant was in fact employed by the United Nations or one of its specialized agencies. Second, the protection offered by these provisions is only for people who were residing in Canada when the absence began. Again, I have found that the Claimant stopped residing in Canada in September 1992 (which is before the date his employment started).

The Claimant's years of employment with a Canadian company while he was in Guyana cannot be counted as residence in Canada

[40] The Claimant submits that from 1994 to 2001, he worked for a Canadian corporation (Edgeworth Construction International Ltd) while he was in Guyana³⁶. He says that the years he worked for the Canadian corporation should be counted as residency in Canada. In support of his argument, the Claimant provided several documents showing his affiliation with Edgeworth from May 1997 to November 2001³⁷.

[41] The Respondent submits that the years the Claimant worked for the Canadian corporation in Guyana cannot be counted towards the Claimant's residency in Canada because the Claimant was not residing in Canada at the time that his employment began.

[42] I agree with the Respondent.

[43] Paragraph 21(4)(c) and subparagraph 21(5)(a)(vi) state that if a person who is a resident of Canada is absent from Canada because the person was employed out of Canada by a Canadian firm or corporation as a representative or member thereof, then the absence shall be deemed not to have interrupted that person's residence or presence in Canada, provided the person had in Canada a permanent place of abode to which he intended to return or maintained in Canada a self-contained domestic establishment, and he returned to Canada within six months after the end of the employment out of Canada.

[44] The Claimant says that he began working for Edgeworth in 1994. This is after the date he stopped residing in Canada and, as such, he is not able to avail himself of the protection offered by the OAS Regulations.

[45] Moreover, there is insufficient evidence to show that the Claimant had in Canada either a permanent place of abode to which he intended to return or maintained in Canada a self-contained domestic establishment. I know the Claimant says that his family (including his spouse and two children) have owned residential property in Canada and that he has stayed at those family properties while in Canada. However, I do not find this meets the requirements of having a permanent place of abode or maintaining a self-contained domestic establishment.

³⁶ Pages GD2-10 and GD2-23. The Claimant confirmed the dates of his work activity during the hearing.

³⁷ Pages GD2-14 to GD2-20, AD1-32 to AD1-37, IS2-88 to IS2-94

[46] First, there is some suggestion in the evidence that the Claimant's relations with his family have been strained for some time. For example, in January 2015, the Claimant's former representative wrote to the Tribunal and said that when the Claimant first applied for the OAS pension, he was separated from his wife and he was estranged from his two children and had no close blood relations in Canada³⁸. (I know the Claimant stopped working for Edgeworth in 2001 and that he did not apply for the OAS pension until 2007, but I do not know over how long a period the Claimant's relations with his family had been strained. During the hearing, the Claimant told me that he has only been separated for about 5 years, but this conflicts with the information provided by his former representative).

[47] Second, the Claimant gave evidence indicating that there may have been a time when he was working for Edgeworth when neither he nor his wife or his children owned property in Canada. He said they used the proceeds of the sale of a family home in Canada to build a home in Guyana (on X Road) and he thinks this was in or about 1996. He also said he kept the home on X Road for 5 or 6 years before selling it.

The Claimant did not re-establish residency in Canada after September 14, 1992

[48] The Claimant reported in his OAS applications that he resumed residency in Canada in 2004. In each application, the Claimant reported that he returned to live in Canada on March 4, 2004, though he also said that he continued to live and work in Guyana until June 2004³⁹.

[49] I am unable to find that the Claimant re-established residency in Canada at any time after September 14, 1992.

[50] First, as I have mentioned previously, the Claimant reported in his applications that he lived in Guyana from 1992 to 2004.

[51] Second, I have very little evidence showing how much time the Claimant has spent in Canada since 1992. The only passports I have in evidence are the Claimant's Canadian passports of October 1990, November 1995, November 2001, and July 2007. This is despite the fact that the Claimant acknowledged during the hearing that he has always had a Guyanese passport.

³⁸ Page IS2-62

³⁹ Pages IS2-6 and GD2-5

Canada does not usually stamp dates of entries into Canadian passports, and so I have no way of knowing, from the information available to me, the dates of the Claimant's entries into Canada or the duration of his stays in Canada. I am not prepared to infer that the Claimant must have been in Canada whenever he was absent from Guyana. The Claimant acknowledged that he travelled to foreign countries while he was employed in Guyana. Also, the Claimant acknowledged spending time in the United States, where he says some of his siblings reside. In fact, in November 2018 the Claimant reported that he was temporarily "living" in the United States with family⁴⁰.

[52] Third, the Claimant has made statements that seemingly acknowledge he has not been residing in Canada. For example, in November 2018, the Claimant wrote that it is not possible to maintain a permanent residence in Canada without receiving the OAS pension⁴¹. During the hearing, the Claimant said that he is currently living in his own home in Guyana. He explained that he bought the home sometime after 2000 and that he sold the home about two months ago. Although the house is sold he still has possession of it. The Claimant also said that last year he applied for senior's subsidized housing in Toronto, but his application has not yet been approved.

[53] Fourth, although the Claimant has continued to have *some* residential ties to Canada, they are not so strong as to show that he was making his home and ordinarily living in Canada after September 14, 1992. The Claimant is a Canadian citizen. However, he is also a Guyanese citizen⁴². The Claimant has maintained bank accounts and a credit card in Canada⁴³, but he also acknowledged during the hearing that he has bank accounts in the United States and in Guyana. The Claimant says that he has maintained his Ontario health insurance coverage. However, he also testified that he has been receiving most of his health care in Guyana. Similarly, the Claimant told me that he has maintained a Canadian driver's license, though he acknowledged he does not have a vehicle in Canada. However, he also testified that he has maintained a Guyanese driver's license and that he has a vehicle in Guyana.

⁴⁰ Page GD1-10

⁴¹ Page GD1-7

⁴² Page GD1-8

⁴³ Pages AD1-38 and AD1B-37

The Claimant does not qualify under the 10-year residency rule for a full OAS pension

[54] I have considered whether the Claimant is able to use the 10-year residency rule to qualify for a full OAS pension⁴⁴. This rule requires the applicant to have reached age 25 by July 1, 1977 (which the Claimant did) and to have resided in Canada before July 1, 1977 (which the Claimant did). The rule also requires residency in Canada for the 10 years *immediately* preceding the day on which the person's application is approved. If the person has not resided in Canada for those 10 years, the person can still be eligible for a full pension if they can show that (1) they were present in Canada prior to those 10 years for an aggregate period at least equal to three times the aggregate periods of absence; and (2) they resided in Canada for at least one year immediately preceding the day on which that person's application is approved.

[55] The Claimant does not qualify for a full OAS pension based on this provision. I do not have enough information to show he was present in Canada for 30 years prior to 2006 (being 10 years before his 2016 application). Also, his application has not been approved and so he does not meet the one-year residency requirement that must immediately precede the approval.

CONCLUSION

[56] The appeal is dismissed. The Claimant resided in Canada from March 4, 1976 to and including September 13, 1992 (the day before the day he entered Guyana). He has not re-established residency in Canada since September 1992. The Claimant has less than 20 years of residency in Canada and is, therefore, not eligible for an OAS pension.

Shannon Russell
Member, General Division - Income Security

⁴⁴ The rule is set out in Subsection 3(1) of the *Old Age Security Act*