



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *YK v Minister of Employment and Social Development*, 2020 SST 893

Tribunal File Number: GP-18-2752

BETWEEN:

Y. K.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Teleconference hearing on: August 19, 2020

Date of decision: August 20, 2020

DECISION

[1] I am dismissing the appeal. The Claimant, Y. K., is not entitled to an *Old Age Security Act* (OAS) pension.

OVERVIEW

[2] The Claimant was born in Japan in June 1955. He lived there until January 1987, when he moved to Canada on a three-year employment contract. He returned to Japan in February 1990. He applied for an OAS pension in October 2017.¹ The Minister of Employment and Social Development (the Minister) denied the application because the Claimant was not 65 years old, and because he had not resided in Canada long enough to qualify.² The Claimant appealed to the Social Security Tribunal.

WHAT I HAVE TO DECIDE

[3] I have to decide if the Claimant qualifies for an OAS pension.

PRELIMINARY MATTER

[4] At the hearing, the Claimant said he thought the Tribunal had already allowed his appeal. He referred to an April 19, 2019 decision by another Tribunal member. However, that decision was only to allow the Claimant an extension of time to appeal, since he had filed the appeal more than 90 days after he received the Minister's reconsideration decision.³ It did not decide if the Claimant was entitled to an OAS pension. That is what my decision is about.

DOES THE CLAIMANT QUALIFY FOR AN OAS PENSION?

[5] The OAS pension is payable to someone who has turned 65 years of age, and who has resided in Canada for the required period of time.⁴

¹ GD2-11-15

² GD2-3-4, 7-8

³ This time limit is set out in paragraph 52(1)(b) of the *Department of Employment and Social Development Act*. Subsection 52(2) of the same *Act* allows the Tribunal to extend the time.

⁴ Subsections 3(1) and (2) *Old Age Security Act*

[6] The Claimant has now met the age requirement for the OAS pension. However, he does not meet the residency requirement.

The Claimant does not have enough years of residence in Canada

[7] Because the Claimant was not residing in Canada when he applied for the OAS pension, he had to have previously resided in Canada for at least 20 years in order to receive it.⁵ He had only three years of actual residence in Canada, so he does not qualify based solely on that.

Under the Canada-Japan treaty the Claimant has no years of residence in Canada

[8] A treaty between Canada and Japan will sometimes allow a person's residence in one country to count towards his eligibility for social benefits in the other. But the treaty does not help the Claimant qualify for an OAS pension. That is because the treaty says he needs to have completed at least one year of residence in Canada.⁶ It also says the time he spent in Canada does not count as residence. I will explain this in more detail.

[9] The agreement says that if a person is "subject to the legislation of Japan" while present or residing in Canada, those years do not count as residence in Canada.⁷ The Claimant was "subject to the legislation of Japan" because he contributed to the Japanese pension system while he lived in Canada.⁸

[10] The Minister filed a document from the Japan Pension Service to prove this. The document states that the Claimant's period of coverage was from April 1, 1978, to July 1, 2015.⁹ Since the treaty says that only certain Japanese pensions are covered by the legislation, this document did not make it clear that the Claimant was subject to it. However, the Claimant told me at the hearing that he paid into the Employees' Pension Insurance system, which is one of the pensions to which the treaty applies.¹⁰

⁵ Subsection 3(2) *Old Age Security Act*

⁶ Article 6(3) *Agreement Between Canada and Japan on Social Security*

⁷ Article 6(1)(b) *Agreement Between Canada and Japan on Social Security*

⁸ Articles 2(1)(c) and 3(1)(a) *Agreement Between Canada and Japan on Social Security*

⁹ GD2-21-25

¹⁰ Article 3(1)(a)(ii) *Agreement Between Canada and Japan on Social Security*

[11] I recognize that the Claimant paid into the Japanese pension system from 1987 to 1990 because he was required to. That does not matter. The treaty does not distinguish between voluntary and involuntary payments.

[12] The Claimant argued that the treaty was not in effect while he lived in Canada. That is true. It came into effect in 2008. However, that doesn't make any difference here. The treaty says that relevant events that took place before it came into effect are still to be taken into account.¹¹ In any case, as I stated above, the Claimant did not qualify without the treaty either, because he did not reside in Canada for at least 20 years.

Other considerations do not matter

[13] The Claimant submitted that he should get an OAS pension because he contributed to the *Canada Pension Plan* (CPP) and paid income taxes when he lived in Canada. He said he was told that if he contributed to a pension in Canada, the Canadian government would pay him a pension even if he lived in Japan. The Claimant may be thinking of a CPP retirement pension, which is different from an OAS pension. He told me he does not think he is receiving anything from the CPP. According to the Minister, he is.¹² Regardless, this appeal is not about the CPP. It is about whether the Claimant can receive an OAS pension.

[14] The Claimant's CPP contributions and income tax payments in Canada do not qualify him for an OAS pension. The only factors that determine whether the Claimant can receive an OAS pension are his age, and his residence in Canada. With or without the application of the treaty, he does not meet the residence requirement. Therefore he is not eligible.

CONCLUSION

[15] The appeal is dismissed.

Virginia Saunders
Member, General Division - Income Security

¹¹ Article 18(2) *Agreement Between Canada and Japan on Social Security*

¹² GD2-3