



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *BB v Minister of Employment and Social Development*, 2020 SST 1097

Tribunal File Number: GP-18-2369

BETWEEN:

**B. B.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

---

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

---

Decision by: Carol Wilton

Teleconference hearing on: November 3, 2020

Date of decision: November 30, 2020

## DECISION

[1] The Claimant is not entitled to higher payments of his *Old Age Security* (OAS) pension.

## OVERVIEW

[2] The Claimant was born in Poland in April 1945. He came to Canada in October 1981. In July 2010, he applied for the OAS pension. The Minister approved his application retroactive to May 2010, the month after he turned 65. He was to receive a partial OAS pension of 28/40<sup>ths</sup> based on his years of residence in Canada.

[3] In August 2010, the Claimant wrote the Minister to say that he would like to withdraw his application. Under the law, however, he could not withdraw it because he had already received his first payment.<sup>1</sup>

[4] In October 2010, a letter from the Minister stated: “we have received your request to suspend the payment of your [OAS] pension.” In October 2010, the Claimant signed a document requesting this. The Minister suspended payment as of October 2010.<sup>2</sup>

[5] In January 2018, the Claimant requested reinstatement of his OAS pension. The Minister reinstated it as of February 2018 at the original rate of 28/40<sup>ths</sup>, as provided under the OAS.<sup>3</sup>

[6] In May 2018,<sup>4</sup> the Claimant informed the Minister that he had expected the amount of his pension would increase between 2010 and 2018 because of his additional years of residence in Canada. He also requested an increase in the amount of the pension under the voluntary deferral program because he postponed receiving it until after he turned 70.<sup>5</sup>

[7] In July 2018, the Minister upheld the original decision on reconsideration. The Claimant appealed to the Social Security Tribunal (Tribunal).

---

<sup>1</sup> Section 5.1 of the OAS

<sup>2</sup> GD2-19

<sup>3</sup> Section 9 of the OAS

<sup>4</sup> GD2-14

<sup>5</sup> Subsection 7.1(4) of the OAS. This provision provides a higher pension amount to claimants who defer receiving the OAS between ages 65 and 70.

## **PRELIMINARY MATTERS**

### ***The Minister's abeyance requests***

[8] In October 2018, the Claimant sent his Notice of Appeal to the Tribunal. The Minister requested several times that the matter be put in abeyance (on hold) to allow time to review the allegation of erroneous advice or administrative error. The Claimant did not allege that there had been erroneous advice or administrative error, and the Minister did not say what exactly they were investigating.<sup>6</sup> The Tribunal granted the Minister's requests. In June 2020, the Minister asked for a further extension of the abeyance period until December 31, 2020. This was more than two years after the filing of the Notice of Appeal.

[9] I scheduled a prehearing conference for July 9, 2020. The purpose was to see whether the Minister would be able to complete the investigation any sooner. At the prehearing conference, the Minister's representative stated that the Claimant had not understood the effect of suspending his OAS payments. Perhaps there had been administrative error or erroneous advice. The Minister's representative stated that she would try to see that the matter received attention sooner than the end of December 2020.

[10] In correspondence dated October 6, 2020, the Minister notified the Claimant that a review of their records showed no evidence of erroneous advice or administrative error.<sup>7</sup>

### ***Reduction of the OAS recovery tax***

[11] The Claimant believes that he is entitled to a reduction of his OAS recovery tax.<sup>8</sup>

[12] I do not have jurisdiction (the power) to make a decision on this matter for two reasons. First, the reconsideration decision did not discuss it. Under the law, my authority to consider a

---

<sup>6</sup> Under section 32 of the OAS Act

<sup>7</sup> GD21

<sup>8</sup> Working seniors collecting the OAS pension may have all or part of the pension clawed back, depending on their income.

matter is based on the contents of the reconsideration decision.<sup>9</sup> I am not empowered to make a decision about issues that the Minister's reconsideration did not cover.

[13] The second reason I can't make a decision about the OAS recovery tax is that under the law I can only consider the amount of the benefit that can be paid to the Claimant, or a decision that no benefit is payable.<sup>10</sup> The Claimant must take this matter up with the Canada Revenue Agency.

## **ISSUES**

[14] Is the Claimant entitled to an increase in his OAS pension because he has additional years of residence since he originally applied?

[15] Is the Claimant entitled to an increase in his OAS pension because he voluntarily deferred receiving the OAS benefit past the age of 65?

## **ANALYSIS**

### ***I. The Claimant is not entitled to an increase in his OAS pension because of additional years of residence in Canada***

#### ***The law***

[16] The law states that once an application for a partial monthly pension is approved, the amount of that pension may not be increased based on subsequent periods of residence in Canada.<sup>11</sup>

[17] The legislation provides that a pensioner may make a request that a pension cease to be payable. The pension can be reinstated following a written request.<sup>12</sup>

#### ***The Claimant's situation***

---

<sup>9</sup> Subsection 27.1(1) of the OAS

<sup>10</sup> Section 27.1 and subsection 28(1) of the OAS

<sup>11</sup> Subsection 3(5) of the OAS

<sup>12</sup> Subsections 9.1 (1) and (3) of the OAS

[18] On July 21, 2010, the Minister informed the Claimant that his application for the OAS had been approved. The letter also stated as follows: “when an application for a partial OAS pension has been approved, the pension will not increase with additional years of residence in Canada.”<sup>13</sup>

[19] In August 2010, the Claimant requested the withdrawal of his application for the OAS pension. He stated that this decision followed a discussion of the matter with “one of your associates ... delaying the application of Old Age Security Pension will increase my pension with additional years of residence in Canada.”<sup>14</sup>

[20] The Service Canada Notes from 2010 to 2018 show no communication from the Claimant regarding the effect of withdrawing his application in 2010. This does not mean it did not happen. It just means that there is no independent evidence of it occurring.<sup>15</sup>

[21] In correspondence dated October 15, 2010, Service Canada stated that it had received the Claimant’s request for suspension of the OAS. Payment would stop as of October 2010. It would begin again a month after the Minister received written notice that the Claimant would like to resume receiving the OAS pension. The Claimant would “not receive any money for the period that [he] asked to stop receiving [his] benefit.”<sup>16</sup>

[22] In October 2010, the Claimant signed a document requesting a suspension of his OAS pension. The document stated that if he wished to start receiving the pension in future, he would not receive any money for the months during which he had requested suspension.<sup>17</sup>

[23] The evidence shows that in 2010 the Claimant believed that suspending his OAS pension would result in enhanced benefits because of a longer period of residence in Canada. In 2011, he asked Service Canada to provide him with a letter to this effect.<sup>18</sup> The appeal file contains no record of a letter responding to the Claimant’s request.

---

<sup>13</sup> GD2-23. See subsection 3(5) of the OAS

<sup>14</sup> GD2-22

<sup>15</sup> GD2-5. The notes also show that in August 2011 the Claimant requested a letter stating that if he applied for the OAS in five years, his OAS would be higher because he would have five more years of residence in Canada: GD2-4.

<sup>16</sup> GD2-20

<sup>17</sup> GD2-19

<sup>18</sup> GD2-4: Service Canada notes

[24] In its letter of October 6, 2020, Service Canada stated that the Claimant did not incur a loss of OAS benefits due to erroneous advice or administrative error. Service Canada based this finding on its letter of July 21, 2010, stating that when an application for an OAS pension was approved, the pension would not increase with additional years of residence.<sup>19</sup>

[25] The law grants a discretionary power to the Minister to take remedial action when there has been a loss of benefits in cases of erroneous advice or administrative error.<sup>20</sup> I do not have authority to offer the remedy the Claimant seeks.<sup>21</sup> If the Claimant wishes to pursue the matter further, he will have to appeal the negative decision of October 6, 2020 to the Federal Court.<sup>22</sup>

[26] I explained to the Claimant that there was a deadline for appealing to the Federal Court. He did not need to await receipt of my decision in order to do so.

[27] The Claimant is not entitled to an increase in his OAS pension because of additional years of residence in Canada between 2010, when payment was suspended, and 2018, when payment resumed.

## ***II. The Claimant is not entitled to an increase in his OAS pension because of voluntary deferral***

### ***The law***

[28] In July 2013, changes in the OAS pension regime came into effect. A voluntary deferral provision now allowed individuals who delayed receipt of the OAS pension between the ages of 65 and 70 to receive larger payments, depending on the length of the deferral period.<sup>23</sup>

[29] The amount of the pension does not increase:

- after the person reaches 70 years of age,
- for any month before July 2013, or

---

<sup>19</sup> GD21-2

<sup>20</sup> Section 32, OAS Act.

<sup>21</sup> *K.B. v. Minister of Employment and Social Development*, 2015 SSTAD 929, a decision that is not binding on me but that is persuasive

<sup>22</sup> See *Pike v. Canada (A.G.)*, 2019 FC 135, and *Pike v. Canada (A.G.)*, 2020 FC 415

<sup>23</sup> Subsection 7.1 (2) of the OAS

- for any month in which the pension would not be paid because the person is incarcerated or because the pension is suspended due to the pensioner leaving Canada or ceasing to reside in Canada.<sup>24</sup>

[30] At the same time, the legislation took account of the fact that there could be individuals who had been approved for or had begun receiving their pensions around the time of these changes who might have deferred their pensions had this option been offered to them. People in this situation who wanted to take advantage of voluntary deferral could cancel their pension within six months after the date that payment of the pension began. They also had to repay the amount of any pension within six months of the date of the request for cancellation.<sup>25</sup>

### *The Claimant's situation*

[31] The voluntary deferral provision of the OAS came into effect in July 2013. The Claimant reached the age of 70 in April 2015. What is at issue, then, is whether he was entitled to increased payments of his OAS pension as a result of deferring payment in the period from July 2013 to April 2015. As stated above, the amount of the pension by law does not increase for any month before July 2013 or after a claimant turns 70.

[32] The Claimant was not entitled to increased payments as a result of deferring payment of his OAS pension. Payment of his OAS pension began in 2010. The law says that a request for cancellation of a pension has to be made no later than six months after the day on which payment of the pension began.<sup>26</sup> The effect of this provision is that someone in the Claimant's position is not eligible for increased payments if they voluntarily defer receiving them.

[33] The Claimant is not entitled to an increase in his OAS pension because of voluntary deferral.

[34] I am a statutory decision-maker. I must apply the law as it is set out in the OAS Act. I do not have authority to render decisions based on fairness, compassion, or extenuating circumstances.

---

<sup>24</sup> Subsection 7.1(4) of the OAS

<sup>25</sup> Subsection 26.1(1) OAS Regulations; *Pike v. Canada (A.G.)*, 2019 FC 135 at paragraph 4

<sup>26</sup> Subsection 26.1 (1) OAS Regulations

[35] The Minister's letter of October 6, 2020 stated that there had been no administrative error or erroneous advice relating to the denial of the Claimant's claim for increased OAS pension amounts under the voluntary deferral program.<sup>27</sup>

[36] As stated above, I do not have the authority to make decisions relating to erroneous advice or administrative error. Decisions on these matters are within the discretion of the Minister. If the Claimant wishes to challenge the Minister's decision of October 6, 2020 for either or both of these reasons, his route lies through an appeal to the Federal Court.

## **CONCLUSION**

[37] The appeal is dismissed.

Carol Wilton  
Member, General Division - Income Security

---

<sup>27</sup> GD21