



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SS v Minister of Employment and Social Development*, 2020 SST 1248

Tribunal File Number: GP-19-1566

BETWEEN:

S. S.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Date of decision: December 4, 2020

DECISION

[1] I have allowed the appeal in part. I have changed the Minister's decision. The Claimant, S. S., is not entitled to a full pension under the *Old Age Security Act* (OAS Act). He is entitled to a partial pension of 7/40ths, payable as of February 2017.

OVERVIEW

[2] The Claimant was born in India in 1940. He lived most of his life in Pakistan before moving to Canada in November 2008. Because of his job he also spent periods of time in Germany, France and Hong Kong between 1975 and 1987.

[3] In January 2018 the Claimant applied for an OAS pension.¹ The Minister of Employment and Social Development (the Minister) approved his application. The Claimant was to receive a partial pension of 10/40ths of the full pension amount, based on 10 years of residence in Canada by November 2018. Payment would start in December 2018.²

[4] On reconsideration, the Minister changed the size of the pension and the start date. The Claimant's partial pension was now 8/40ths, payable as of May 2017.³

[5] The Claimant appealed to the General Division of the Social Security Tribunal.

WHAT I HAVE TO DECIDE IN THIS APPEAL

[6] The Claimant is appealing because:

- He says he is entitled to a full pension.⁴
- He says if he does not get a full pension, his partial pension should be larger than 8/40ths. He says he should get credit for three years of residence in France, six months of residence in Germany, and one and a half years of residence in Hong Kong.⁵

¹ GD2-5-9

² GD2-19-20

³ GD2-3-4

⁴ GD1-9

⁵ GD1-11

- He says payment of his pension should have started earlier.⁶

THE REASONS FOR MY DECISION

[7] I have decided the Claimant is entitled to a partial OAS pension of 7/40ths, payable as of February 2017. I reached that decision by considering the following issues.

The Claimant did not meet the requirements for a full OAS pension

[8] To receive a full OAS pension, a person usually has to reside in Canada for at least 40 years from age 18 until the time their application is approved.⁷ The Claimant did not meet that requirement, because he did not move to Canada until 2008.

[9] A person without 40 years of residence can qualify for a full pension if they meet other conditions.⁸ But they have to meet all the conditions. The Claimant does not. He met the first requirement, which is that he had to have reached 25 years of age on July 1, 1977. He did not meet the next requirement, because he did not reside in Canada or possess a valid immigration visa on or before July 1, 1977. A person who began their residence in Canada or obtained an immigration visa after July 1, 1977, does not qualify under this rule.⁹

The Claimant met the requirements for a partial OAS pension

[10] A person who does not qualify for a full pension may be eligible for a partial pension. If they live in Canada when the pension is approved, they need to have 10 years of residence here.¹⁰ The amount of a partial pension is calculated based on the number of years out of 40 that the person resided in Canada after turning 18.¹¹ For example, a person with 22 years of residence receives a partial pension of 22/40ths of the full amount.

⁶ GD1-10

⁷ Paragraph 3(1)(c) *Old Age Security Act*

⁸ Paragraph 3(1)(b) *Old Age Security Act*

⁹ The Federal Court of Canada said this in *Flitcroft v. Attorney General of Canada*, 2012 FC 782.

¹⁰ Paragraph 3(2) *Old Age Security Act*

¹¹ Subsection 3(3) *Old Age Security Act*

[11] Canada has agreements on social security with other countries. These agreements may allow a person's residence outside Canada to count towards eligibility for an OAS pension.¹² These are called totalizing provisions.

[12] The Claimant qualified for a partial pension of 10/40ths in November 2018, based on his actual residence in Canada as of that month. However, Canada's agreement with France helps him qualify before that date.

[13] I recognize the Claimant also lived or worked in India, Pakistan, Germany and Hong Kong. But the only country where the Claimant's residence or presence affects his OAS pension is France. I will explain why.

Canada does not have agreements with Hong Kong and Pakistan

[14] The Claimant's residence in Hong Kong and Pakistan does not help him. Residence in another country only matters if Canada has an agreement on social security with that country. The agreement has to say that the time spent in the other country will count as residence in Canada for OAS purposes. Canada does not have agreements on social security with Hong Kong or Pakistan.

[15] I considered whether Canada's agreement with China might include Hong Kong. The agreement does not say so. But the agreement would not help the Claimant anyway. Residence in China is only considered to be residence in Canada if the person made contributions to the *Canada Pension Plan* while they were in China.¹³ The Claimant did not.

Agreements with India and Germany do not help the Claimant

[16] The Claimant's residence in India does not help him, because the OAS Act only counts residence after a person turns 18. The Claimant has not lived in India since he was seven years old.¹⁴

¹² The agreements are authorized by section 40 of the *Old Age Security Act*.

¹³ Article 10 *Agreement on Social Security Between the Government of Canada and the Government of the People's Republic of China*

¹⁴ GD2-7

[17] The agreement with Germany does not help the Claimant either. The agreement says that a period of residence in Germany is to be considered as a period of residence in Canada for OAS purposes.¹⁵ But I have decided the Claimant never resided in Germany.

[18] A person resides somewhere if they make their home and ordinarily live in that place. This definition is in the OAS Regulations.¹⁶ I used this definition because the agreement with Germany does not define “residence.” The agreement says that any term not defined in it has the meaning assigned to it in the applicable legislation. In this case, the applicable legislation is the OAS Act and Regulations.¹⁷

[19] The Claimant did not make his home and ordinarily live in Germany. His employer sent him to Germany for training from August 1975 to January 1976. While he was there, he lived in an apartment with another trainee. His wife and children remained in Pakistan. The bank that was hosting him paid for the apartment. His employer paid his monthly salary to his family in Pakistan. He returned to Pakistan the day after the training ended.¹⁸ The Claimant was in Germany temporarily. He did not reside there. As a result, his time in Germany does not count as residence in Canada.

The agreement between Canada and France helps the Claimant

[20] I find the Claimant resided in France from July 30, 1976, to June 30, 1979. Because of the agreement between Canada and France, this period counts as residence in Canada. I will explain how I reached this conclusion. Then I will explain how it affects the Claimant’s OAS pension.

The Claimant began to reside in France on July 30, 1976

¹⁵ Article 14(a) *Agreement Between the Government of Canada and the Government of the Federal Republic of Germany on Social Security* as amended by the *Supplementary Agreement* of December 2003

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

¹⁷ Articles 1(1)(c); 1(2) and 2(1)(b) *Agreement Between the Government of Canada and the Government of the Federal Republic of Germany on Social Security*

¹⁸ GD8-20-21; GD25-21-23

[21] The Minister says the Claimant resided in France from July 30, 1976, to March 13, 1978.¹⁹ This is based on a French document showing those dates.²⁰ The Claimant disagreed with this. He says he lived in France for more than three years while he was employed in the Paris branch of the National Bank of Pakistan.²¹

[22] I agree with the Claimant, in part. I cannot find that his residence in France started before July 30, 1976, but I am satisfied it ended later than the Minister says. However, it was less than three years.

[23] The Claimant has not provided any evidence to show he resided in France before July 30, 1976, which is the date on the document the Minister relied on.²² The Claimant argues, correctly, that this document is an identity card, not a passport or visa, so it is not evidence of when he arrived in France or when he left.

[24] However, the Claimant did not say when he believes he started to reside in France. That means I have to rely entirely on the available documents. The letter of transfer from his employer was written on April 20, 1976. It indicates that at that time, the Claimant was still working at the head office in Karachi, Pakistan. The letter says the transfer has immediate effect, but it does not say when the Claimant would go to Paris.²³

[25] The Claimant's passport shows he got a visa from the French consulate in Karachi on July 12, 1976.²⁴ He left Pakistan on July 27, 1976.²⁵ I cannot see a passport stamp showing when the Claimant arrived in France in 1976.²⁶ There is nothing in his wife's passport either.²⁷ The identity card is the first evidence that he was actually in the country. As a result, I find the Claimant began to reside in France on July 30, 1976.

The Claimant stopped residing in France on June 30, 1979

¹⁹ GD2-18-4

²⁰ GD2-110

²¹ GD1-11

²² GD2-110

²³ GD2-146

²⁴ GD25-37

²⁵ GD25-38

²⁶ GD25-31-47

²⁷ GD25-4-11

[26] The document the Minister relied on is not evidence the Claimant stopped residing in France in March 1978. There is nothing that tells me the March date is an exit from the country. Furthermore, the document is valid until November 25, 1980.²⁸ That tells me the Claimant likely had the right to remain in France at least up to that time.

[27] There is enough evidence to persuade me that the Claimant was still residing in France after March 1978. Passports show that he and his wife had visas to travel from Paris to Switzerland as tourists for eight days in August and September 1978. The visas were issued in Paris.²⁹ That tells me they were likely still living in France.

[28] A letter from the National Bank of Pakistan shows the Claimant worked for the bank in Paris until April 24, 1979, when he was transferred back to Pakistan with immediate effect.³⁰ He got a visa in France on May 18, 1979.³¹ There are no passport stamps showing the Claimant went anywhere after that date, until he returned to Pakistan on June 30, 1979.³² Therefore, I am satisfied his residence in France ended on June 30, 1979.

How the Claimant's residence in France affects his OAS pension

[29] I acknowledge that the Claimant was residing in France on July 1, 1977. As discussed above, this was the deadline for qualifying for a full pension without 40 years of residence in Canada. But the agreement with France does not allow the Claimant to get a full OAS pension on that basis. The agreement says that if a person's eligibility for an OAS pension is based on the totalizing provisions, the amount of the pension benefit is calculated as a partial pension based on the person's residence in Canada that may be considered under the OAS Act.³³ That means that only the Claimant's actual residence in Canada matters in determining how much he will receive. So the agreement with France does not help the Claimant receive a full OAS pension.

²⁸ GD25-110

²⁹ GD25-42, 9

³⁰ GD2-115

³¹ GD25-43

³² GD25-36

³³ Article 16(1) *Agreement Between the Government of Canada and the Government of the French Republic on Social Security*

[30] The agreement affects when the Claimant became eligible to receive a partial OAS pension. Because of the agreement, the period from July 30, 1976, to June 30, 1979, counts as residence in Canada when determining the Claimant's eligibility for the pension. So when the Claimant moved to Canada on November 30, 2008, he already had two years and 336 days of residence. He needed to reside in Canada for another seven years and 29 days to be eligible for a partial OAS pension. He met that requirement in December 2015. In his application, the Claimant said he wanted his pension to start as soon as he qualified.³⁴

[31] Although the Claimant's residence in France helped him qualify for a pension sooner, it did not increase the amount he received. As discussed above, the agreement with France says that only years of actual residence in Canada count when calculating the amount of the pension.³⁵ The size of the Claimant's pension (7/40ths of the full amount) is based on the Claimant's seven full years of actual residence in Canada from when he arrived in November 2008, to when he first qualified in December 2015.³⁶

When payment of the Claimant's OAS pension starts

[32] The Claimant gave three dates when he thought payment of the pension should start.

- July 2005, the month after he turned 65;
- December 2013, the month after he became a permanent resident, or
- May 2016, the month after he turned 76.³⁷

[33] I cannot accept any of those dates. The OAS Act says payment of the pension begins with the first month after the pension is approved.³⁸

[34] So, I first have to decide when the Claimant's pension was approved. The Claimant was 77 years old when he applied. The OAS Act says that where an application is received after a

³⁴ GD2-6

³⁵ Article 16(1) *Agreement Between the Government of Canada and the Government of the French Republic on Social Security*

³⁶ Subsection 3(4) of the *Old Age Security Act* says that the period of residence is to be rounded down to the lower multiple of a year when it is not a multiple of a year.

³⁷ GD1-9-11

³⁸ Subsection 8(1) *Old Age Security Act*;

person has turned 65, the approval of the application is effective on the latest of the following dates:

- one year before the day the application was received;
- the day the applicant turned 65;
- the day the applicant qualified for the pension under the OAS Act, or
- the month immediately before the date specified in writing by the applicant.³⁹

[35] In the Claimant's case:

- one year before the day the application was received was January 29, 2017.
- the day the Claimant turned 65 was June 25, 2005.
- the day the Claimant qualified for the pension under the OAS Act was December 28, 2015, when he met the 10 year residence requirement by counting his residence in France and his actual residence in Canada.
- the month immediately before the date specified in writing by the Claimant was November 2015, because he asked for it to be payable as soon as he qualified.⁴⁰

[36] The latest of the above dates was January 29, 2017. That is the effective approval date of the Claimant's application. Payment starts the following month, in February 2017.

CONCLUSION

[37] The appeal is allowed, in part.

Virginia Saunders
Member, General Division - Income Security

³⁹ Subsection 8(2) *Old Age Security Act*; subsection 5(2) *Old Age Security Regulations*

⁴⁰ GD2-6