



Citation: *SB v Minister of Employment and Social Development*, 2021 SST 687

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: (Claimant) S. B.

Respondent: (Minister) Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 1, 2020 (issued by
Service Canada)

Tribunal member: Raymond Raphael

Type of hearing: Teleconference

Hearing date: October 13, 2021

Hearing participants: Appellant/Claimant
Minister's representative

Decision date: October 15, 2021

File number: GP-21-1660

DECISION

[1] The Claimant is entitled to a partial *Old Age Security* (OAS) pension at 36/40^{ths} of the full pension. His payments start as of July 2019, the month after he turned 65.

OVERVIEW

[2] The Claimant was born in Romania in June 1954. He came to Canada on July 21, 1982. In August 2018, he applied for the OAS pension.¹ On his application, he stated that even though he lived in England from April 1989 to June 1991, he was still a resident of Canada during that period. In May 2019, the Minister approved his application at 36/40^{ths} of the full pension.² The Minister excluded April 1989 to June 1991 (the disputed period) from its calculation of the Claimant's period of residence in Canada.³

[3] The Claimant requested a reconsideration of the period of residence.⁴ He stated that he is entitled to a pension of 36/40^{ths} of the full pension because he continued to be a resident of Canada during the disputed period. The Minister denied his request for reconsideration. The Claimant appealed to the Social Security Tribunal (Tribunal).

[4] In May 2021, a member of the Tribunal's General Division dismissed the Claimant's appeal. She decided that he was not entitled to a higher pension amount because he did not meet the residence requirements set out in subparagraph 21(5)(a)(vi) of the *OAS Regulations* during the disputed period.⁵ This was because he was not employed by a Canadian firm or corporation.

[5] The Claimant appealed to the Tribunal's Appeal Division. In July 2021, a member of the Appeal Division allowed the appeal and referred the matter back to the General Division for reconsideration with the following directions:

¹ GD2-3

² GD2-38

³ GD2-37: Minister's residence calculation sheet

⁴ GD2-42

⁵ This subsection provides that a person's absence from Canada for more than one year does not interrupt his residence in Canada if he was employed by a Canadian firm or corporation, maintained a home in Canada, and returned to Canada within six months of the end of his employment.

- The General Division member was to accept the finding by the initial member that the Claimant was not working for a Canadian company while he lived in the United Kingdom (UK) during the disputed period.
- The General Division member was to consider the Ding factors⁶ to determine if the Claimant resided in Canada during the disputed period.
- The General Division member should hold a pre-hearing conference and give the parties a reasonable amount of time to submit new documents and arguments about the Claimant's ties to Canada and the UK during the disputed period.

[6] I conducted a pre-hearing conference on September 22, 2021. At the pre-hearing conference I decided, amongst other matters, the following:⁷

- After considering the Claimant's objection, I decided that both the pre-hearing conference and hearing should be recorded.
- That the recording of the initial General Division hearing should be part of the evidence at the hearing.
- That the matter should proceed to a hearing since both parties confirmed they were ready to proceed to the hearing.

[7] In order to avoid unnecessary duplication, I treated the recording of the evidence at the initial General Division hearing as part of the evidence at this hearing. The Claimant gave additional evidence at the hearing.

ISSUE

[8] Did the Claimant reside in Canada during the disputed period from April 1989 to June 1991?

⁶ The Ding factors are set out in paras 12 & 13, below

⁷ Report on pre-hearing conference: GD7

ANALYSIS

[9] A full OAS pension is paid to individuals who have resided in Canada for at least 40 years after the age of 18.⁸ If a person has not resided in Canada for at least 40 years, the legislation provides for the possibility of a partial pension. To be eligible for a partial pension, a person must have resided in Canada for at least ten years.⁹ The amount of the partial pension bears the same relation to the full monthly pension as their period of residence does to 40 years. The amount is rounded down to the lower multiple of a year.¹⁰ So, for example, if a person resided in Canada after the age of 18 for ten years and nine months (and also meets the other eligibility requirements), then the person will be eligible for a partial OAS pension of 10/40ths.

[10] The OAS Regulations distinguish between the concepts of residency in Canada and presence in Canada. A person resides in Canada if they make their home and ordinarily live in any part of Canada.¹¹ A person is present in Canada when they are physically present in any part of Canada.¹²

[11] The OAS regulations provide that an absence from Canada of a temporary nature that does not exceed one year shall be deemed not to have interrupted a person's period of residence.¹³ However, it does not necessarily follow that an absence of more than one year, interrupts the person's period of residence.¹⁴

[12] I must weigh all the facts of the case and the Claimant's circumstances. The Claimant's intention to live in Canada is not enough on its own to show residence. The determination of residency is a factual issue that requires an examination of the whole context of the Claimant's circumstances.

⁸ Subparagraph 3(1)(c)(iii) of the OAS Act

⁹ Paragraph 3(2)(b) of the OAS Act.

¹⁰ Sections 3(3) and (4) of the OAS Act

¹¹ Paragraph 21(1)(a) of the OAS Regulations

¹² Paragraph 21(1)(b) of the OAS Regulations

¹³ Section 21(4) of the OAS regulations

¹⁴ *Perera v. Canada (MHW)*, [1994] FCJ, No. 351 (TD), page 5,

[13] I must consider a number of non-exhaustive factors when determining if the Claimant made his home and ordinarily lived in Canada during the disputed period. These factors include, but are not limited to:¹⁵

- Ties in 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 living in Canada is substantially deep rooted and settled)

The Claimant resided in Canada during the disputed period

[14] The Claimant is an engineer. Shortly after he came to Canada in 1982, he started to work for a division of Olympia & York (O & Y), a large real estate developer. O & Y's practice was to hire subcontractors to do the construction. O & Y managed the projects. The Claimant's salary was processed by a subcontractor, but O & Y gave the money for his salary to the sub-contractor. O & Y followed this practice when the Claimant worked for them on the Battery Park development in New York and also when he worked for them in Ireland. In April 1989, he started to work on O & Y's Canary Wharf project in London, England. Although he went to London at O & Y's request, his salary was processed through an American company. The Canary Wharf project

¹⁵ *Canada (MHRD) v Ding*, 2005 FC 76 and *Duncan v Canada (AG)*, 2013 FC 319.

stopped in 1991 because O & Y went bankrupt. The Claimant returned to Canada in April 1991.

[15] The Minister submits that the Claimant was not a resident of Canada during the disputed period because he was absent from Canada for an extended period of time (more than one year). He has not provided documentation to establish that he had a more substantial connection to Canada than to the UK during the time he lived and worked in London.

[16] I now turn to the factors set out in paragraph 13, above.

- ***Ties in the form of personal property etc.:*** The Claimant owned a house in Canada. He had purchased it the year before he went to London. He kept the house empty while he was in London. He arranged for a friend to check on the house. He kept all of his furniture in the house. He paid the mortgage, taxes, and other expenses from his Canadian bank account. He paid all of his expenses from his Canadian bank account. He used Canadian credit cards. His salary was deposited to his Canadian bank account. When he needed cash he mailed a cheque to a friend. His friend cashed the cheque and sent him a money order. He sold his car when he moved to England. He rented a furnished flat in London. He did not buy any furniture in the UK. He did not own any property in the UK. He did not have a bank account in the UK. He did not have a car in the UK. He did not have any UK credit cards.
- **Social ties in Canada and the UK:** He maintained his membership in the Quebec engineering association. He was not a member of any professional or other organizations in the UK. He had friends in Canada. His aunt (who had urged him initially to move to Canada) lived in Canada. He had no relatives in the UK other than his wife. His only friends in the UK were persons he worked with.

- **Other ties:** He kept and renewed his Canadian driver's license. He did not get a British driver's license. He kept his Canadian medical coverage and purchased out of country insurance. He did not have any English medical coverage. He filed income taxes in Canada. He did not file any UK income taxes. All of his mail was sent to his address in Canada. His UK work permit allowed him to work on the Canary Wharf project but he was not allowed to do other work.
- **Regularity and length of stay in Canada and England:** He came back to Canada about three times during the disputed period. He came back for a week or two during his vacations to check on the house. His wife also came back about three or four times. On one occasion, she stayed for a couple of months because her sister came to visit from Romania.
- **Mode of living:** The Claimant had resided in Canada since 1982 and maintained all of his roots in Canada during the disputed period. He did not establish any significant roots in the UK. He returned to Canada immediately after work on the Canary Wharf project was halted.

[17] The Claimant's absence from Canada was solely because he was working in London at the request of O & Y. He did not establish any significant ties to the UK. He maintained his ties and deep rooted connection to Canada. He continued to be anchored in Canada. His ties to Canada were far stronger than they were to the UK.

[18] I find that the Claimant has established that it is more likely than not that he continued to be a resident of Canada from April 1989 to June 1991. This gives him an additional period of residence of a little over two years.

CONCLUSION

[19] The Claimant came to Canada in July 1982. Therefore, on June 10 2019, the day before his 65th birthday, he had slightly less than 37 years of residence in Canada. Since the number of years is rounded down, he is entitled to an OAS pension of 36/40^{ths}

of the full pension amount. His payments are effective as of July 2019, the month after his 65th birthday.

[20] The appeal is allowed.

Raymond Raphael
Member, General Division - Income Security