



Citation: *AA v Minister of Employment and Social Development*, 2022 SST 56

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. A.

Respondent: Minister of Employment and Social Development
Representative: Dani Grandmaître

Decision under appeal: General Division decision dated March 28, 2022
(GP-20-1799)

Tribunal member: Neil Nawaz

Type of hearing: On the record

Decision date: August 19, 2022

File number: AD-22-353

Decision on Agreement

[1] The appeal is allowed in accordance with an agreement between the parties.

Background

[2] The Claimant, A. A., was born in Nigeria in 1950. He first entered Canada as a visitor and went on to live and work in this country for many years.

[3] In October 2017, the Claimant applied for an Old Age Security (OAS) pension. In his application, he claimed to have continuously lived in Canada since September 1974.

[4] The Minister spent several years investigating the Claimant's residence history and eventually found that the Claimant had resided in Canada from **June 16, 1975 to December 31, 1984**, a period of nine years, six months and 15 days and from **January 1, 1987 to August 29, 1996**, a period of nine years, seven months and 28 days. The two periods of residence totalled **19 years, two months and 13 days**.¹

[5] The Claimant appealed the Minister's decision to the Social Security Tribunal's General Division. The General Division held a hearing by teleconference and dismissed the appeal. In its decision, it found that the Claimant had resided in Canada from **September 1, 1974 to December 31, 1984**, a period of 10 years, three months and 30 days, and from **January 1, 1987 to August 29, 1996**, a period of nine years, seven months and 28 days. The two periods of residence totalled **19 years, 11 months and 28 days**.

[6] Although the General Division recognized a slightly longer period of Canadian residence, the Claimant was still left with an OAS pension of 19/40^{ths} of the full amount, because the law requires aggregate periods to be rounded down.² That meant the Claimant was still short of the 20 years of Canadian residence that would have allowed him to collect the OAS pension while living outside Canada.³

¹ See Minister's reconsideration letter June 5, 2020, GD2-12.

² See section 3(4) of the *Old Age Security Act*.

³ See section 3(2)(b) of the *Old Age Security Act*.

The Claimant's reasons for appealing

[7] The Claimant applied for permission to appeal the General Division's decision. He alleged that the General Division made the following errors:

- It failed to count as Canadian residence the period from January 1, 1985 to May 20, 1985, when he was registered as a full-time graduate student at Kansas State University;
- It failed to recognize that he returned to Canada from a U.S. training placement on June 8, 1986 and remained in this country for the rest of that year; and
- It failed to include in his period of Canadian residence a three-month visit to his family in X, Alberta from May 15, 1997 to August 16, 1997.

[8] I granted the Claimant permission to appeal. I thought there was an arguable case that the General Division missed a piece of documentary evidence supporting the Claimant's assertion that he was living and working in Canada for part of 1986.

Agreement

[9] On August 15, 2022, the parties came to a written agreement. They have asked me to prepare a decision that reflects that agreement.

[10] The agreement reads in part:

The General Division based its decision on an error of law when, on finding that the coverage provisions at Articles V and VI of the Agreement Between the Government of Canada and the Government of the United States of America with Respect to Social Security (Canada/US Agreement) applied to the Appellant for the periods of June 8, 1986 to December 31, 1986 and August 29, 1996 to August 16, 1997, it determined that the Appellant was not a resident of Canada for those periods of time. Paragraphs 1 to 4 of Article VI of the Canada/USA Agreement only apply to the category of people described in Article V. These are detached workers, i.e. workers in one country sent by their employer to work in the other country for temporary periods. The Appellant is not a detached worker. He

simply worked in the United States for periods in 1985, 1986, 1996 and 1997. Paragraph 5 applies to border workers who live in the United States but work daily in Canada contributing to the Canada Pension Plan. This is not the Appellant's situation. Paragraph 6 only applies to those described in paragraphs 4 and 5. As such, the provision does not cover the Appellant's situation and these periods should not have been excluded from the calculation of his residency.

The General Division based its decision on perverse or capricious errors of facts when it failed to consider the evidence in its entirety with respect to the Appellants' country of residence for the periods of June 8, 1986 to December 31, 1986 and of August 29, 1996 to August 16, 1997.

Therefore, under the *Social Security Tribunal Regulations* section 184, and the DESDA section 59(1), the parties request the Tribunal allow the appeal and give the following order that the General Division should have given:

- (a) Article VI of the Agreement Between the Government of Canada and the Government of the United States of America with Respect to Social Security does not apply to the Appellant for the periods of June 8, 1986 to December 31, 1986 and August 29, 1996 to August 16, 1997;
- (b) The periods of June 8, 1986 to December 31, 1986 and August 29, 1996 to August 16, 1997 shall be included in the calculation of the Appellants' period of residency in Canada;
- (c) Therefore, the Appellant's period of residency in Canada is of 21 years, 6 months and 8 days and he is entitled to a partial old age security pension of 21/40ths pursuant to paragraphs 3(2), (3) and (4) of the OASA;
- (d) Proceeding in this manner is the most cost-effective and efficient for both parties and consistent with section 2 and paragraph 3(1)(a) of the SST Regulations.

[11] I accept the parties' agreement.

Conclusion

[12] The appeal is allowed in accordance with the agreement.

[13] The General Division based its decision on erroneous findings of fact, made without regard for the material before it, when it decided that the Claimant was entitled to a partial OAS pension at a rate of 19/40^{ths} of a full pension. I am giving the decision that the General Division should have given and granting the Claimant a pension at a rate of 21/40^{ths}.



Member, Appeal Division