



Citation: *OC v Minister of Employment and Social Development*, 2022 SST 1320

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: O. C.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 1, 2022 (issued by
Service Canada)

Tribunal member: Wayne van der Meide

Type of hearing: On the record

Decision date: December 12, 2022

File number: GP-22-582

Decision

[1] The appeal is dismissed.

[2] The Minister of Employment and Social Development (Minister) followed the law when it determined the amount of an Old Age Security (OAS) pension for the Appellant, O. C.. The Minister correctly determined the size of the pension (4/40 of the full amount). Payments start as of May 2018. The Appellant is not entitled to an increased pension.

[3] This decision explains why I am dismissing the appeal.

Overview

[4] The Appellant was born in the Philippines on April 13, 1946.¹ He turned 65 on April 13, 2011. He immigrated to Canada as a permanent resident on January 9, 2013.²

[5] The Appellant applied for an OAS pension on April 5, 2019.³ He said he wanted his pension to start as soon as he qualified.

[6] The Minister granted the Appellant a partial pension of 4/40.⁴

[7] The Appellant says he is entitled to a partial pension of 29/40. He says that the amount of his pension should include the years he worked in the Philippines.⁵

[8] The Minister says the Appellant's years of contributing to the social security plan in the Philippines only help him meet the residence requirement to be eligible for an OAS pension. They do not add to the amount of his pension.

¹ See GD1-12.

² See GD2-29.

³ See GD2-21 to GD2-28.

⁴ The Minister of Employment and Social Development (Minister) manages the Old Age Security programs for the Government of Canada.

⁵ See GD1-4.

What I have to decide

[9] I have to decide if the Agreement on Social Security between Canada and the Philippines (Agreement) increases the amount of the Appellant's OAS pension.

Reasons for my decision

[10] I find that the Appellant isn't eligible for a partial OAS pension of more than 4/40.

[11] The amount of the Appellant's pension is based on the number of years he actually resided in Canada. The time he contributed to the social security plan in the Philippines also counts as residence in Canada. It helps him **qualify** for an OAS pension. But it doesn't change the **amount** of the pension.

[12] Here are the reasons for my decision.

When the Appellant actually resided in Canada

[13] The Minister says the Appellant **actually** resided in Canada from January 9, 2013, to March 13, 2017 and from September 17, 2018 to April 5, 2019.

[14] The Appellant does not disagree with the Minister's calculation.⁶ I see no reason to disagree either. I find that the Appellant actually resided in Canada during the above periods.

[15] This adds up to four full years of residence in Canada.⁷ Usually, a person needs to have resided in Canada for at least ten years to be eligible for an OAS pension.⁸ But they may also qualify through an international social security agreement.⁹

⁶ See GD2-23.

⁷ The period of residence is rounded down to the lower multiple of a year when it isn't a multiple of a year. See section 3(4) of the *Old Age Security Act* (OAS Act).

⁸ See section 3(2)(b) of the OAS Act.

⁹ Section 40 of the OAS Act allows the Government of Canada to make agreements with other countries to totalize periods of residence and periods of contribution.

Canada's agreement with the Philippines helps the Appellant qualify

[16] Canada has a social security agreement with the Philippines (Agreement).¹⁰ This means that the time the Appellant contributed to the social security plan in the Philippines counts towards his eligibility for an OAS pension.

– Creditable periods count towards entitlement to the pension

[17] When I am deciding whether the Appellant has enough years of residence to qualify for an OAS pension, I can add his creditable period from the Philippines to his actual years of residence in Canada. The Agreement calls this "totalization."¹¹

[18] The government of the Philippines said the Appellant's creditable period was 303 months or 25 years and 3 months.¹²

[19] The Appellant provided a letter from his employer saying that he worked for them for approximately 33 years and 5 months.¹³ Although the letter does not say this, I will assume that the employer meant the Appellant worked in the Philippines.

[20] However, the Agreement does not talk about years working in the Philippines. The Agreement says that a creditable period in the Philippines is a period of contribution or creditable service used to acquire the right to a benefit under the legislation of the Republic of the Philippines."¹⁴ It doesn't matter how long the Appellant worked in the Philippines. What matters is how long he contributed to the social security plan in the Philippines.¹⁵

¹⁰ The Agreement's full name is the Agreement on Social Security Between Canada and the Republic of the Philippines. The Agreement was amended by a Supplementary Agreement of November 1999.

¹¹ See Article VIII, paragraphs 1 and 2(a) of the Agreement.

¹² See GD2-58 to 60.

¹³ See GD2-8.

¹⁴ See Article 1, paragraph 1 of the Agreement, as amended by Article II of the Supplementary Agreement.

¹⁵ See the definition of "creditable period" in Article I, paragraph 1 of the Agreement, as amended by Article II of the Supplementary Agreement: "'creditable period' means, as regards the Republic of the Philippines, a period of contribution or creditable service used to acquire the right to a benefit under the legislation of the Republic of the Philippines..."

[21] Therefore, I find that 25 years and 3 months is the Appellant's creditable period from the Philippines. However, as I will explain below, even if his creditable period in the Philippines were longer, it would not change the amount of his pension.

– **Creditable periods don't count towards the amount of the pension**

[22] The Appellant argues that the years he worked in the Philippines should also add to the amount of his pension.¹⁶ I disagree.

[23] The Appellant argues that section 40 of the OAS Act allows Canada to enter into agreements with other countries for the "totalization or periods of residence and period of contributions in that country and periods of residence." It also says that "the payment" of benefits is based on this totalization.

[24] In fact, the OAS Act says that an agreement may provide for payment "**where applicable** as a result of totalization" based on periods of residence and periods of contribution.¹⁷ To understand how totalization applies to the Appellant's pension we need to look at the Agreement.

[25] The Appellant notes that the Agreement says "a creditable period under the legislation of the Republic of the Philippines shall be considered as a period of residence in the territory of Canada."¹⁸

[26] But this provision in the Agreement says it is "for purposes of determining entitlement" to an OAS benefit. Entitlement to a benefit is not the same thing as the amount of a benefit.

[27] The Agreement makes it clear that a creditable period in the Philippines does not change the amount of an OAS pension. It says this: "If a person is entitled to the payment of a pension...Canada shall calculate the amount of the pension ...**exclusively** on the basis of the periods of residence in Canada which may be

¹⁶ See GD1 and GD5.

¹⁷ See section 40(1)(e) of the Agreement as amended by Article II of the Supplementary Agreement..

¹⁸ See Article VIII, paragraph 2(a) of the Agreement.

considered under that Act.”¹⁹ I interpret this to mean “actual” periods of residence in Canada, not periods of residence related to creditable periods in the Philippines.

The Appellant qualified for a partial OAS pension of 4/40 on April 5, 2018

[28] The amount of a person’s OAS pension depends on how many years they resided in Canada when their pension is approved.

[29] The Appellant was 72 years old when he applied for an OAS pension. Because his application was received after he turned 65, it is approved on the **latest** of the following dates:²⁰

- one year before the day it was received—in this case, April 5, 2018
- the day the Appellant turned 65—in this case, April 13, 2011
- the day the Appellant qualified for the pension—in this case, January 9, 2014²¹
- the month before the day specified in writing by the Appellant—in this case, December 2013²²

[30] The latest of these dates is April 5, 2018. The amount of his pension is based on how many years he had actually resided in Canada by that date.

[31] As I explained above, only the Appellant’s actual residence in Canada counts towards the amount of his pension.

[32] The Appellant **resided in Canada** from:

- January 9, 2013 to March 13, 2017, which is 4 years, 2 months and 5 days

¹⁹ See Article XI, paragraph 1 of the Agreement.

²⁰ See section 5(2) of the OAS Regulations.

²¹ Sections 3 to 5 of the OAS Act set out the requirements for an OAS pension. See also section 22(1) of the OAS Regulations. There is no dispute that the Appellant is a Canadian citizen or legal resident of Canada. When he moved to Canada on January 9, 2013, he already had a creditable period of at least 10 years under the Agreement. He needed to have resided in Canada for one year before he would be entitled to any partial pension.

²² The Appellant asked for payments to start as soon as he qualified, which was January 9, 2014.

- September 17, 2018 to April 5, 2019, which is 6 months and 20 days

[33] This is a total of 4 years, 8 months and 25 days. The period of residence is rounded down to the lower multiple of a year when it isn't a multiple of a year.²³

[34] This means the Appellant qualifies for a partial pension of 4/40.

When payments start

[35] The Appellant's pension starts in May 2018.

[36] OAS pension payments start the first month after the pension is approved.²⁴ The Appellant's pension was approved in April 2018.²⁵

[37] The Minister said in its submissions that it incorrectly started payment of his pension in October 2018. The Minister agreed that it owes the Appellant retroactive payments from May to September 2018.²⁶

Conclusion

[38] The Appellant is eligible for a partial OAS pension of 4/40.

[39] This means the appeal is dismissed.

Wayne van der Meide

Member, General Division – Income Security Section

²³ See section 3(4) of the OAS Act.

²⁴ See section 8(1) of the OAS Act.

²⁵ The law sets out several possible dates for approval of an OAS pension. The approval takes place on the latest of those dates. In the Appellant's case, the latest date was in April 2018. See section 8 of the OAS Act and section 5 of the OAS Regulations.

²⁶ See GD4-4.