



Citation: *BA v Minister of Employment and Social Development*, 2023 SST 1865

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: B. A.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 15, 2022
(issued by Service Canada)

Tribunal member: James Beaton

Type of hearing: Teleconference

Hearing date: December 11, 2023

Hearing participant: Appellant

Decision date: December 20, 2023

File number: GP-22-1813

Decision

[1] The appeal is allowed in part.

[2] The Appellant, B. A., is eligible for a partial Old Age Security (OAS) pension of 11/40. Payments start as of August 2018. This decision explains why I am allowing the appeal in part.

Overview

[3] The Appellant was born in India on April 1, 1951. He came to Canada as a permanent resident on November 17, 2000.¹ He became a Canadian citizen in 2010.² Since coming to Canada, he has also spent time in India and working on ships abroad.

[4] The Appellant applied for an OAS pension on July 31, 2019. He said he wanted his pension to start as soon as he qualified.

[5] The Minister of Employment and Social Development granted the Appellant a pension of 10/40 with payments starting as of September 2019.³ The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[6] The Appellant says he has resided in Canada since November 17, 2000. He only left Canada to work, or to visit and care for his siblings. Based on his application date of July 31, 2019, he says he should get 18/40 of a pension. He wants his payments to start as of August 2018.

[7] The Minister says the Appellant only had 10 full years of residence in Canada when he qualified for an OAS pension in August 2019. He was frequently outside Canada from June 6, 2010, to February 19, 2019, for months at a time. Furthermore, he can't be considered a resident of Canada when he was working on ships abroad. Based on the Minister's calculations, the earliest he could be paid was September 2019.

¹ See the Appellant's application at GD2-71 to 78.

² The Appellant confirmed this at the hearing.

³ The Minister of Employment and Social Development (Minister) manages the Old Age Security programs for the Government of Canada. See the reconsideration decision at GD2-3 to 5.

What the Appellant must prove

[8] To receive a **full** OAS pension, the Appellant must prove he resided in Canada for at least 40 years after he turned 18.⁴ This rule has some exceptions. But the exceptions don't apply to the Appellant.⁵

[9] If the Appellant doesn't qualify for a full OAS pension, he might qualify for a **partial** pension. A partial pension is based on the number of years (out of 40) that a person resided in Canada after they turned 18. For example, a person with 12 years of residence receives a partial pension of 12/40 the full amount.

[10] To receive a partial OAS pension, the Appellant must prove he resided in Canada for at least 10 years after he turned 18. But, if the Appellant didn't reside in Canada the day before his application was approved, he must prove he already has 20 years of residence.⁶

[11] The Appellant must prove he resided in Canada. He must prove this on a balance of probabilities. This means he must show that it is more likely than not he resided in Canada during the relevant periods.⁷

Reasons for my decision

[12] The parties **agree**, and I accept, that the Appellant resided in Canada for 10 years and 28 days:

- from November 17, 2000, to June 5, 2010
- from February 20, 2019, to August 30, 2019

[13] The parties **disagree** about whether he resided in Canada from June 6, 2010, to February 19, 2019.

⁴ See section 3(1)(c) of the *Old Age Security Act* (OAS Act). The Appellant must also be at least 65 years old and a Canadian citizen or legal resident of Canada. And he must have applied for the pension. The Appellant has met these requirements.

⁵ See section 3(1)(b) of the OAS Act.

⁶ See section 3(2) of the OAS Act.

⁷ See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

[14] I find that the Appellant resided in Canada from June 6, 2010, to August 23, 2011, but not from August 24, 2011, to February 19, 2019.

[15] In total, I find that the Appellant resided in Canada for 11 years and 77 days when he qualified for an OAS pension. He resided in Canada:

- from November 17, 2000, to August 23, 2011 (10 years and 280 days)
- from February 20, 2019, to July 31, 2019 (162 days)

[16] His residence after July 31, 2019, doesn't matter because he chose to receive an OAS pension as soon as he qualified, which was on July 31, 2019. His pension payments start as of August 2018, 11 months before he applied.

[17] Here are the reasons for my decision.

The test for residence

[18] The law says that being present in Canada isn't the same as residing in Canada. "Residence" and "presence" each have their own definition. I must use these definitions in making my decision.

[19] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.⁸

[20] A person is **present** in Canada when they are physically present in any part of Canada.⁹

[21] When I am deciding whether the Appellant resided in Canada, I must look at the overall picture and factors such as:¹⁰

- where he had property, like furniture, bank accounts, and business interests

⁸ See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

⁹ See section 21(1)(b) of the OAS Regulations.

¹⁰ See *Canada (Minister of Human Resources Development) v Ding*, 2005 FC 76. See also *Valdivia De Bustamante v Canada (Attorney General)*, 2008 FC 1111; *Duncan v Canada (Attorney General)*, 2013 FC 319; and *De Carolis v Canada (Attorney General)*, 2013 FC 366.

- where he had social ties, like friends, relatives, and membership in religious groups, clubs, or professional organizations
- where he had other ties, like medical coverage, rental agreements, mortgages, or loans
- where he filed income tax returns
- what ties he had to another country
- how much time he spent in Canada
- how often he was outside Canada, where he went, and how much time he spent there
- what his lifestyle was like in Canada
- what his intentions were

[22] This isn't a complete list. Other factors may be important to consider. I must look at **all** of the Appellant's circumstances.¹¹

When the Appellant resided in Canada

[23] There is no dispute about when the Appellant was **present** in Canada. His presence in Canada is given in the table on the next page.¹²

[24] From June 6, 2010, to February 19, 2019, the Appellant often travelled abroad to work on ships as a marine engineer. The ships were owned by an Indian company, but they didn't always leave from Indian ports. When he was assigned to a ship, he lived on that ship. If the ship docked at a port, he would sometimes go ashore, but he had to return to the ship each night. He slept on the ship. Ship assignments were generally months long. Occasionally he would arrive in India a few days or weeks early so that he could visit his brother and sister there. They were both ill, so he would care for them during his visits. Sometimes he would also stay in India for a few days or weeks after his ship assignment ended, for the same purpose.¹³

¹¹ See *Canada (Minister of Human Resources Development) v Chhabu*, 2005 FC 1277.

¹² See GD2-29 and 34. Where the Appellant was present in Canada and India (or elsewhere) on the same day, that day was counted as a day of presence in Canada and not in the other country.

¹³ See the hearing recording.

start date	end date	days	where
June 6, 2010	October 28, 2010	145	ship
October 29, 2010	February 17, 2011	112	Canada
February 18, 2011	March 14, 2011	25	India
March 15, 2011	August 23, 2011	162	Canada
August 24, 2011	January 28, 2012	158	ship / India
January 29, 2012	May 23, 2012	116	Canada
May 24, 2012	September 16, 2012	116	ship / India
September 17, 2012	October 24, 2012	38	Canada
October 25, 2012	April 27, 2013	185	ship / India
April 28, 2013	September 5, 2013	131	Canada
September 6, 2013	January 28, 2014	145	India / Australia
January 29, 2014	August 3, 2014	187	Canada
August 4, 2014	January 26, 2015	176	ship / India
January 27, 2015	March 14, 2015	47	Canada
March 15, 2015	August 7, 2015	146	ship / India
August 8, 2015	September 13, 2015	37	Canada
September 14, 2015	February 21, 2016	161	ship / India
February 22, 2016	May 17, 2016	86	Canada
May 18, 2016	February 6, 2017	265	ship / India
February 7, 2017	May 17, 2017	100	Canada
May 18, 2017	March 15, 2018	302	India / South Africa
March 16, 2018	July 4, 2018	111	Canada
July 5, 2018	February 19, 2019	230	ship / India

– **Rules that could apply if an applicant works on a ship**

[25] There are rules in the *Old Age Security Regulations* that are potentially relevant if an applicant for an OAS pension has worked outside Canada on a ship. I will explain why these rules do or don't apply to the Appellant.

– **Rules that don't apply**

[26] One rule says that if a person is present or resident in Canada, they are considered to remain present or resident while they are employed or engaged outside Canada, either:

- a) as a worker in lumbering, harvesting, fishing or other seasonal employment,
or
- b) as a transport worker on trains, aircraft, ships or buses running between
Canada and points outside Canada or other similar employment¹⁴

[27] The legislation doesn't define "other seasonal employment." To understand what these words mean, I must consider the text, context, and purpose of the legislation.¹⁵

[28] The Cambridge Dictionary defines "seasonal" as "relating to or happening during a particular period in the year." Merriam Webster defines it as "of, relating to, or varying in occurrence according to the season." In both definitions, the emphasis is on an event that happens at a particular time of year.

[29] The specific industries mentioned in the rule (lumbering, harvesting, and fishing) provide context. Each industry operates during a particular season, which is consistent with the above definitions of "seasonal."

[30] Finally, the purpose of the rule and the list of rules in which it appears is to carve out **exceptions** to the general rule that a person is only "present" in Canada when they are physically present in any part of Canada. The rules also provide additional clarity

¹⁴ See sections 21(5)(b)(vii) and (viii) of the OAS Regulations. To benefit from these rules, a person must also return to Canada within six months of the end of their employment or engagement, or turn 65 while employed or engaged outside Canada.

¹⁵ See *MM v KM and Minister (Employment and Social Development)*, 2022 SST 575 at paragraph 26.

about when a person may be considered resident in Canada. These exceptions should be interpreted precisely and narrowly so as not to undermine the general rules that Parliament set out when defining “presence” and “residence.”

[31] Rule (a) doesn’t apply because the Appellant didn’t work in lumbering, harvesting, fishing or other seasonal employment. The ships were cargo ships. The Appellant testified that his employment was “not all the year, only seasonal.” He added that there was “no fixed time.” I then asked him how he found out about assignments. He said sometimes the company contacted him, and sometimes he contacted them.¹⁶

[32] Taking this information together, and looking at the pattern of the Appellant’s trips, I understand that the Appellant’s employment was periodic but not seasonal. The evidence shows that the Appellant worked on a ship during **all** months of the year. As he said, there was no fixed time. He could not predict when the next ship would leave.

[33] Rule (b) doesn’t apply because the ships didn’t run between Canada and points outside Canada.

[34] Another rule lists additional situations where a person may be employed outside Canada but still be considered present or resident in Canada.¹⁷ The Appellant thinks those situations apply to him. Unfortunately, they don’t. They apply in the case of specific employers. An Indian shipping company isn’t listed as one of those employers.

– **A rule that does apply**

[35] One rule says that a person is considered not to be living in any part of Canada when they are living on a ship outside the territorial waters of Canada.¹⁸ This rule **does** apply. The Appellant lived on the ships where he worked, and those ships only travelled outside the territorial waters of Canada.

[36] The rule doesn’t say that a person is considered not to be **resident** or **ordinarily living** in Canada—just that they aren’t considered to be **living** in Canada. Parliament’s

¹⁶ See the hearing recording from 00:10:30 to 00:11:10.

¹⁷ See sections 21(5)(a) of the OAS Regulations.

¹⁸ See section 21(2) of the OAS Regulations.

use of the word “living” rather than “resident” or “ordinarily living” was intentional. The Minister overlooks this distinction.

[37] The distinction is important because it means the rule doesn’t necessarily keep someone from being resident in Canada while they work on a ship abroad. However, it will be difficult to establish residency in these circumstances since a person must be ordinarily living in Canada in order to be a resident of Canada.

– **June 6, 2010, to August 23, 2011**

[38] The Appellant **resided** in Canada from June 6, 2010, to August 23, 2011.

[39] The parties agree that he resided in Canada from November 17, 2000, to June 5, 2010. The Minister says he stopped residing in Canada on June 6, when he left Canada to work on a ship.

[40] Although he is considered not to be living in Canada while working on a ship abroad, that was only from June 6 to October 28, 2010 (145 days). Before that, he had resided in Canada for years. And after October 28, 2010, he remained in Canada until August 23, 2011, except for 27 days (February 17 to March 15, 2011) when he visited family in India. That visit was short and he didn’t work on a ship at that time.

[41] There is a rule that says an absence from Canada that is of a temporary nature and less than one year doesn’t interrupt that person’s residence in Canada.¹⁹ I find that the Appellant’s absence in 2011 was of a temporary nature and less than one year. His residence was uninterrupted during this period.

– **August 24, 2011, to February 19, 2019**

[42] The Appellant **did not reside** in Canada from August 24, 2011, to February 19, 2019.

[43] On August 23, the Appellant left Canada to work on a ship abroad. Beginning August 24, he didn’t reside in Canada. He was away until January 29, 2012. This was

¹⁹ See section 21(4)(a) of the OAS Regulations.

the beginning a pattern of long trips abroad to work on ships followed by shorter periods spent in Canada. There are only two exceptions to this pattern:

- **From September 6, 2013, to January 28, 2014** (145 days), the Appellant travelled to India and spent a few days visiting his brother in Australia. He didn't work on a ship. He returned to Canada for 187 days before leaving on his next trip.
- **From May 18, 2017, to March 15, 2018** (304 days), he travelled to India and spent a few days visiting his brother in South Africa. He didn't work on a ship. He returned to Canada for 111 days before leaving on his next trip.²⁰

[44] These exceptions don't change the fact that the Appellant didn't make his home and ordinarily live in Canada during this period. Overall, he spent 69% of his time outside Canada. Most of that time he was working on a ship and is deemed not to have been living in Canada. Clearly, even though he lived in Canada some of the time, he didn't **ordinarily** live in Canada. So he didn't reside in Canada.

[45] In addition to the greater amount of time that he spent outside Canada compared to in Canada, other factors show that his ties to Canada were minimal. He wasn't deep-rooted and settled here.

- Out of 10 trips abroad during this period, he only bought return plane tickets two to four times.²¹ He testified that he bought return tickets if he knew when he would be returning. This suggests that he didn't know when he would be returning to Canada on six to eight occasions.
- In Canada, he lived in a shared rented basement suite in British Columbia because he could not afford to buy property. I can understand that expense might have been a barrier to owning property. However, he wasn't listed on the rental agreement either. Instead, he paid rent directly to the tenants who

²⁰ The Appellant testified that he only spent a few days of each trip visiting his brothers in Australia and South Africa.

²¹ See GD5-2 to 8.

were listed on the rental agreement. Three or four times when he returned from a trip, he would not be allowed to move back in right away, so he stayed at a Sikh temple for a few days. His living situation was tenuous. By contrast, he owned an apartment in India. No one stayed there but him. He could have stayed there whenever he wanted.

- His only possessions in Canada were clothes, kitchen utensils, and a “bed in a bag.” He kept furniture in his Indian apartment.
- He had a British Columbia driver’s licence but he didn’t own or rent a vehicle. Instead, he borrowed a vehicle from his friends or the Sikh temple as needed.
- He didn’t have any family ties in Canada. He separated from his wife in August 2007 and became estranged from his son. There is no evidence about whether he kept in touch with his daughter. By comparison, he had two siblings in India whom he visited when he was there.

[46] The Appellant’s main tie to Canada was his volunteer work at the Sikh temple, which he attended almost daily. He served food and took care of children who attended camps that the temple organized. I acknowledge that he also filed taxes, had bank accounts and credit cards, and was eligible for healthcare in Canada.²²

[47] Despite these ties to Canada, I can’t ignore that the Appellant spent more time outside Canada than in Canada. He didn’t maintain family ties in Canada, and his living arrangement here was informal and insecure.

[48] For these reasons, I find that the Appellant didn’t reside in Canada from August 24, 2011, to February 19, 2019.

The Appellant qualified for a partial OAS pension in July 2019

[49] The Appellant qualified for a partial OAS pension of 11/40 on July 31, 2019.

²² See GD1-8 and 9; GD2-29 to 35 and 45; GD3-4 and 5; GD5-2 to 10; and the hearing recording. The Appellant’s income tax filings are at GD3-6 to 52.

[50] The Appellant met the minimum residence requirement of 10 years before that date. But he still had to meet the other requirements for an OAS pension.²³ He met those requirements on the following dates:

- He met the age requirement (65) on April 1, 2016.
- He applied for the pension on July 31, 2019.

[51] The latest of these dates is July 31, 2019. That is when the Appellant qualified for a partial OAS pension. The amount of his pension is based on how many years he had resided in Canada by that date.

[52] The Appellant began residing in Canada on November 17, 2000. He continued residing in Canada up to and including August 23, 2011. He also resided in Canada from February 20, 2019, to July 31, 2019. As of July 31, 2019, he had resided in Canada for 11 years and 77 days after he turned 18.

When payments start

[53] The Appellant's pension starts in August 2018.

[54] OAS pension payments start the first month after the pension is approved. The Appellant's pension was considered approved one year before his application was received—in other words, on July 31, 2018.²⁴

Conclusion

[55] The Appellant is eligible for a partial OAS pension of 11/40. Payments start as of August 2018.

²³ Sections 3 to 5 of the OAS Act set out the requirements. There is no dispute that the Appellant is a Canadian citizen or legal resident of Canada. These requirements are in section 4 of the OAS Act and section 22(1) of the OAS Regulations.

²⁴ See section 8 of the OAS Act and section 5 of the OAS Regulations.

[56] This means the appeal is allowed in part.

James Beaton
Member, General Division – Income Security Section