



Citation: *ZK v Minister of Employment and Social Development*, 2023 SST 1929

**Social Security Tribunal of Canada  
General Division – Income Security Section**

## Decision

**Appellant:** Z. K.  
**Representative:** E. K.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated December 7, 2021 (issued  
by Service Canada)

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**Tribunal member:** Lianne Byrne

**Type of hearing:** In person

**Hearing date:** August 28, 2023

**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** November 2, 2023

**File number:** GP-22-608

## Decision

[1] The appeal is dismissed.

[2] The Appellant, Z. K., isn't eligible for an increase in his *Old Age Security* (OAS) partial pension. This decision explains why I am dismissing the appeal.

## Overview

[3] The Appellant's application for an OAS partial pension was approved by the Minister. The Minister calculated his OAS pension using an aggregate of 38/40<sup>ths</sup>. This was based on a residency period in Canada from August 27, 1982 until July 1, 2021 (the day before his 65<sup>th</sup> birthday). The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[4] The Appellant says he requested that his OAS partial pension start after he had reached 39 years of residency and not sooner. This was not done. The aggregate used to calculate his OAS partial pension should be 39/40<sup>ths</sup>.

[5] The Minister says that the Appellant's residency period in Canada was 38 years and 309 days. The aggregate used to calculate his OAS partial pension (38/40<sup>ths</sup>) is based on this residency period. The aggregate has been correctly calculated. It cannot be rounded up.

## What the Appellant must prove

[6] For the Appellant to succeed, he must prove that he is entitled to receive an increased OAS partial pension.

## Reasons for my decision

[7] If an individual does not qualify for a full OAS pension, he or she may qualify for a partial pension.<sup>1</sup> For a partial pension, the individual must have resided in Canada for

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<sup>1</sup> Section 3(2) of the OAS Act

at least 10 years and must have been a resident on the day preceding the day on which the application is approved.

[8] The amount of a partial monthly pension is calculated based on the aggregate period that the applicant has resided in Canada after attaining 18 years of age and prior to the day on which the application is approved.<sup>2</sup>

[9] The parties agree that the Appellant in this appeal qualifies for an OAS partial pension. He was born on July 2, 1956. He arrived in Canada on August 27, 1982. He turned 65 on July 2, 2021.

[10] The Appellant's period of residency for the purposes of the OAS partial pension is from August 27, 1982 until July 1, 2021, the day before his 65<sup>th</sup> birthday. This is 38 years and 309 days. The Minister applied a 38/40<sup>ths</sup> aggregate to calculate his OAS partial pension.

[11] The Appellant submits that the correct aggregate should be 39/40<sup>th</sup> for two reasons. First, his period of residency should be rounded up instead of down. Second, he wrote on his application that his pension should not begin until he has reached 39 years of residency.

[12] However, the Minister is correct that the residency period cannot be rounded up. While I acknowledge that he is very close to 39 years of residency, the OAS Act states that the aggregate can only be rounded to the lower multiple year.<sup>3</sup>

[13] Similarly, the period of residency used to calculate his OAS pension starts on the date he arrived in Canada, which is August 27, 1982. His period of residency ends the day before his 65<sup>th</sup> birthday, which is July 1, 2021. The period of residency cannot be extended until he reaches 39 years of residency.

[14] I acknowledge that the Appellant was very close to reaching 39 years of residency. I am very sympathetic to the Appellant's situation. However, I am required

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<sup>2</sup> Subsection 3(3) of the OAS Act

<sup>3</sup> Section 3(4) of the OAS Act

to interpret and apply the provisions as they are set out in the OAS Act. I cannot use the principles of equity or consider extenuating circumstances to change his residency period.

## **Conclusion**

[15] I find that the Appellant isn't entitled to an increase in his OAS partial pension.

[16] This means the appeal is dismissed.

Lianne Byrne  
Member, General Division – Income Security Section