



Citation: *JW v Minister of Employment and Social Development*, 2024 SST 474

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

Decision

Appellant: J. W.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated August 15, 2023 (issued by Service Canada)

Tribunal member: James Beaton

Type of hearing: Teleconference

Hearing date: April 22, 2024

Hearing participant: Appellant

Decision date: April 25, 2024

File number: GP-23-1790

Decision

[1] The appeal is dismissed.

[2] The Appellant, J. W., is only eligible for a partial Old Age Security (OAS) pension of 36/40. Payments start as of August 2022. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant was born in Canada on July 30, 1957. He spent most of his life in Canada. Now he lives in Costa Rica.

[4] The Appellant applied for an OAS pension on September 23, 2022. He said he wanted his pension to start as soon as he qualified.¹

[5] To receive a **full** OAS pension, an applicant must prove they resided in Canada for at least 40 years after they turned 18.² If an applicant doesn't qualify for a full OAS pension, they 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. To receive a partial OAS pension, an applicant must prove they resided in Canada for:

- at least 10 years after they turned 18, if they **resided** in Canada the day before their application was approved
- at least 20 years after they turned 18, if they **did not reside** in Canada the day before their application was approved³

[6] In his application, the Appellant wrote that he stopped residing in Canada and started residing in Costa Rica on January 30, 2012.⁴ On that basis, the Minister of

¹ The Appellant's application is at GD2-16 to 26.

² See section 3(1)(c) of the *Old Age Security Act* (OAS Act). Section 3(1)(b) sets out some exceptions, but they don't apply to the Appellant.

³ See section 3(2) of the OAS Act.

⁴ See GD2-21.

Employment and Social Development found that the Appellant resided in Canada until January 30, 2012, for a total of 36 years and 185 days after he turned 18. The Minister therefore granted him a pension of 36/40.⁵

[7] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division. He says he made a mistake when he completed his application. He says he actually resided in Canada until the **end** of 2012.⁶ Therefore, he believes that he is eligible for a pension of 37/40.

What the Appellant must prove

[8] To succeed in his appeal, the Appellant must prove he resided in Canada for at least 37 full years. He must prove this on a balance of probabilities (that it is more likely than not).⁷

Reasons for my decision

[9] I find that the Appellant is only eligible for a partial OAS pension of 36/40. He resided in Canada from July 30, 1975, up to and including June 20, 2012, for a total of 36 years and 327 days after he turned 18. This is slightly longer than the Minister found that he resided in Canada, but still less than 37 full years.

[10] In making my decision, I considered the Appellant's eligibility from January 31, 2012, up to and including December 31, 2012. I chose the first date because the Minister says the Appellant didn't reside in Canada from then on. I chose the second date because the Appellant agrees that he didn't reside in Canada after that date.

[11] Here are the reasons for my decision.

⁵ See the reconsideration decision at GD2-54 and 55.

⁶ When the Appellant filed his appeal, he said he resided in Canada until January 2014 (GD1A-6). At the hearing, he said he was no longer arguing that he resided in Canada beyond December 31, 2012.

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

The test for residence

[12] 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.

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

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

[15] 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
- 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

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.

[16] 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

[17] The Minister and the Appellant agree, and I accept, that the Appellant resided in Canada from his 18th birthday until January 30, 2012.

[18] In addition, I find that the Appellant resided in Canada from January 31, 2012, up to and including June 20, 2012. He didn't reside in Canada after that. To explain how I came to this conclusion, I need to describe his circumstances before and after that date.

– The Appellant's lifestyle in Canada was disrupted by tragedy

[19] The Appellant ran a bar and owned two houses in Canada. He sold his business around 2008 with the intention of retiring.¹² In early 2011, he sold one of his houses. In late spring or early summer of 2011, his other house burned down, leaving him with nowhere to live. The fire also destroyed his woodworking shop, truck, and quad.¹³ He became "pretty much a man with no home." He moved often, staying with different friends and relatives.¹⁴

– The Appellant travelled to Costa Rica

[20] On November 16, 2011, the Appellant left Canada for Costa Rica as a tourist. From passport stamps, it appears that he visited Panama on February 15, 16, and 17, 2012. He re-entered Costa Rica on February 17, 2012. The next passport stamp isn't until September 20, 2012, when he entered the United States on his way to Costa Rica, where he arrived later that day. There are further passport stamps showing:

- he entered Costa Rica on December 13, 2012
- he entered the United States on March 12, 2013
- he entered Costa Rica on March 30, 2013

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

¹² See GD7-3 and the hearing recording.

¹³ See the hearing recording.

¹⁴ See GD6-1.

- he left Costa Rica on November 5, 2013, and returned later that day¹⁵

[21] The Appellant said he bought return plane tickets when he travelled to Costa Rica because Costa Rica doesn't allow non-residents to enter the country without one. According to the Appellant, non-residents are only permitted to stay in the country for up to 90 days at a time. However, I understand from his testimony that he was able to refund the return portion of his tickets in order to stay in the country longer than 90 days. He could not remember when he started doing that.

– **The Appellant separated from his common-law spouse**

[22] Between November 16, 2011, and the fall of 2012, he and his common-law spouse discussed moving to Costa Rica. But their relationship deteriorated before they could make any concrete plans. The Appellant's spouse hired a lawyer and they began separation proceedings. The Appellant stayed in a hotel in Canada for about four months in 2012 while the separation was finalized, which happened in the fall of 2012.

[23] During the proceedings, the lawyer for the Appellant's spouse told him that his spouse would be entitled to some of his income if he were to ever work in Canada again. So the Appellant decided to move to Costa Rica permanently.¹⁶

– **The Appellant invested in Costa Rica**

[24] The Appellant incorporated two companies in Costa Rica: X and X. On June 21, 2012, he bought a house (through those companies) on two adjoining lots in Puntarenas, Costa Rica.¹⁷ He testified that, as a foreigner, he could only buy property through a company.

[25] Around the same time, he bought a fishing boat and a slip at a marina in Quepos, Costa Rica, where he could keep the boat.¹⁸ On October 25, 2012, he opened bank

¹⁵ The Appellant's passport records are at GD1-9 to 12; GD2-27 to 33 and 57 to 59; GD5-3 to 16; and GD7-4.

¹⁶ See the hearing recording.

¹⁷ See GD2-69 to 72. The Appellant testified that he bought the house in January or February 2010, but I prefer to rely on the documentary evidence rather than on his memory of events from over a decade ago.

¹⁸ The Appellant testified that he bought the boat in 2009 but later on he testified that he bought the slip when he bought his house. It is likely that he actually bought the boat around the same time, since he

accounts under his companies' names with X in Costa Rica.¹⁹ Presumably, his companies had bank accounts at another bank before that, since they were used to buy the house and land.

– **The Appellant sought resident status in Costa Rica**

[26] In late 2013, the Appellant hired someone in Costa Rica to help him apply for investor status (resident status) there. He thought the man was a lawyer, but it turned out that he wasn't authorized to practise law in Costa Rica. The man wrote a letter supporting the Appellant's application, based on what the Appellant told him and what immigration officials "wanted to hear." The Appellant didn't read the letter because it was in Spanish, which he can't read.²⁰ The Minister had the letter translated into English when the Minister assessed his OAS application.²¹

[27] The letter describes the Appellant as a married businessman who first entered Costa Rica in 2011 as a tourist. It says he sold all of his assets in Canada and used the proceeds to buy two properties, a sport-fishing yacht, a slip at a marina, and a Mitsubishi vehicle. This is consistent with the Appellant's testimony. The letter also suggests that he sold the Canadian property where his house used to be in order to invest in Costa Rica in 2012.

[28] The letter mentions that he employed two or three people in Costa Rica. At the hearing, he explained that he paid the captain and deckhand of his boat to stay at his house when he wasn't there, to prevent "squatters" from moving in. He also paid a woman to clean the house weekly, and occasionally he paid someone to do yardwork.

[29] On January 30, 2014, the Costa Rican Government responded to the letter, advising that the Appellant's application was incomplete.²² On February 5, 2014, he

didn't even enter Costa Rica until 2011 and it is unclear where he might have kept the boat (which was 32 feet long) without any land or a slip at the marina.

¹⁹ See GD2-79.

²⁰ See the hearing recording.

²¹ The letter is at GD2-73 to 77.

²² See GD2-78.

provided a photo and a copy of his fingerprint to the Government.²³ He testified that he has hired multiple lawyers since then to help him get investor status in Costa Rica.

– **The Appellant lives in Costa Rica as a retiree**

[30] As of the hearing date, the Appellant had not yet been granted any form of resident status. He lives in Costa Rica as a tourist. When asked about his lifestyle, he said he is retired and spends his time fishing, drinking beer, and meeting local women. He receives a Canada Pension Plan retirement pension. The cheques are deposited into a Canadian bank account. From there, he transfers the funds to his bank account in Costa Rica.²⁴

– **June 21, 2012, was a turning point in the Appellant's life**

[31] The Appellant's situation is somewhat unique. After he sold his business and one property, his remaining house burned down. This left him without a permanent place to stay in Canada. Despite his unsettled lifestyle and lack of property in Canada, for a while, his ties to Canada were still stronger than his ties to Costa Rica—he didn't visit Costa Rica until later in 2011.

[32] When he did visit Costa Rica in 2011 and early 2012, it was as a tourist. He and his spouse discussed moving to Costa Rica but, before that could materialize, their relationship soured and they began separation proceedings. The Appellant says he was told that his spouse might be entitled to any potential future income he earned in Canada. That conversation happened in 2012 and was a key factor that led him to decide to move to Costa Rica permanently.

[33] Because of the disruption to the Appellant's lifestyle in Canada in 2011, I consider his **intentions** to be the most important factor in this case. His purchase of a house in Costa Rica on June 21, 2012, demonstrates his intention to reside in Costa Rica as of that date. His decision is significant because he had no house in Canada at the time. If he had intended to continue residing in Canada, I find it likely that he would

²³ See GD7-4.

²⁴ See the hearing recording.

have prioritized rebuilding or buying a house here instead of buying a house in another country with what he admitted were limited funds.

[34] The Appellant's actions after June 21, 2012, reinforce my conclusion that he intended to reside in Costa Rica from that date on. He set up a landline and television service at his house there.²⁵ He bought a boat and a marina slip in Quepos where he could keep it. It was probably around this time that he bought his Mitsubishi; he would have had no need for a vehicle, and nowhere to keep one, before June 21, 2012. He also opened new bank accounts in Costa Rica in October 2012.

[35] By contrast, as of June 21, 2012, he had no Canadian residence or phone number, and he rarely used his Canadian bank account.²⁶ Although he may have made a few trips to Canada between June 21, 2012, and the end of 2013, they were only to finalize the separation and visit people. (He thinks he visited his mother for less than a month around Christmas 2012.) The evidence shows that he had already made up his mind to make Costa Rica his new home by June 21, 2012.

– **The Appellant's application for Costa Rica residency isn't determinative**

[36] The Appellant originally argued that I should consider 2014 to be when he stopped residing in Canada because that is when he submitted a photo and a fingerprint as part of his application for Costa Rica residency.²⁷

[37] I disagree. I don't consider the Appellant's application for resident status to be as significant to my decision as when he bought a house. The Appellant admitted that he managed to stay in Costa Rica for extended periods of time by buying return plane tickets and then getting a refund for the return portion. So, from his perspective, there was no pressing need to get resident status in order to remain in the country. He continues to live in Costa Rica despite not having any official status there.

²⁵ See the hearing recording.

²⁶ See the hearing recording.

²⁷ See GD1A-6 and GD7-3.

The Appellant qualified for a partial OAS pension in September 2022

[38] The Appellant qualified for a partial OAS pension of 36/40 on September 23, 2022.

[39] The Appellant met the minimum residence requirement of 20 years before that date. But he still had to meet the other requirements for an OAS pension.²⁸ He met those requirements on the following dates:

- He met the age requirement (65) on July 30, 2022.
- He applied for the pension on September 23, 2022.

[40] The latest of these dates is September 23, 2022. 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.

[41] The Appellant resided in Canada up to June 20, 2012. As of September 23, 2022, he had resided in Canada for 36 years and 327 days years after he turned 18.

When payments start

[42] The Appellant's pension starts in August 2022.

[43] OAS pension payments start the month after the pension is approved.²⁹ The Appellant was 65 when he applied. When an application is received after a person turns 65, the approval takes effect on the **latest** of the following dates:³⁰

- one year before the day it was received—in this case, September 2021
- the day the Appellant qualified for a pension after turning 65 **and** meeting the 20-year residence requirement—in this case, July 30, 2022

²⁸ 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.

²⁹ See sections 8(1) and (2) of the OAS Act.

³⁰ See section 5(2) of the OAS Regulations.

- the month before the day specified in writing by the Appellant—in this case, the Appellant asked for payments to start as soon as he qualified

[44] The latest of these dates is July 2022. That is the effective approval date. Payments start the following month, which is August 2022.

Conclusion

[45] The Appellant is eligible for a partial OAS pension of 36/40.

[46] This means the appeal is dismissed.

James Beaton
Member, General Division – Income Security Section