Citation: *DB v Minister of Employment and Social Development*, 2025 SST 722

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	D. B.
Respondent:	Minister of Employment and Social Development

Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated November 13, 2024 (issued by Service Canada)

Tribunal member:	James Beaton
Type of hearing:	Videoconference
Hearing date:	May 12, 2025
Hearing participant:	Appellant
Decision date:	May 13, 2025
File number:	GP-24-2020

Decision

[1] The appeal is dismissed.

[2] The Appellant, D. B., is only eligible for a partial Old Age Security (OAS) pension of 4/40 (not 5/40 as the Minister of Employment and Social Development argues, or 11/40 as the Appellant argues). Payments start as of July 2022. This decision explains why I am dismissing the appeal and modifying the Minister's decision.

Overview

[3] The Appellant was born in Canada on February 16, 1957. From 1976 to 1985, he split his time between Canada and the United States, where he attended school and played for the International Hockey League. He has lived in the United States since October 2, 1985.

[4] The Appellant applied for an OAS pension on March 15, 2022. He said he wanted his pension to start in July 2022.[1]

[5] The Minister granted the Appellant a pension of 5/40 effective July 2022.[2] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division because he believes that he is entitled to a pension of 11/40.

What the Appellant must prove

[6] The parties agree that the Appellant's pension should be effective July 2022. The only issue in this appeal is the amount of the Appellant's pension.

[7] The amount of an OAS pension is based on the number of years (out of 40) that a person resided in Canada after they turned 18. Because the Appellant doesn't reside in Canada anymore, he must have at least 20 years of residence in Canada to receive an OAS pension.[3]

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[1] See GD2-3 to 10.
[2] See the reconsideration decision at GD2-15.
[3] See section 3(2) of the *Old Age Security Act*.

[8] Under a social security agreement (Agreement) between Canada and the United States, the time that the Appellant spent working and contributing to social security in the United States can count as years of residence in Canada for the purposes of **qualifying** for a pension. But it doesn't change the **amount** of his pension.[4]

[9] In other words, if the Appellant has 20 years of residence, but 15 of those years come from the Agreement, he would only qualify for a pension of 5/40. To receive a pension of 11/40, he must prove he has at least 20 years of residence, with no more than 9 of those years coming from the Agreement. He must prove this on a balance of probabilities (that it is more likely than not).[5]

Reasons for my decision

[10] The Appellant believes that he is entitled to a pension of 11/40. The Minister believes that he is entitled to a pension of 5/40. I find that he is only entitled to a pension of 4/40.

[11] To explain my decision, I will:

- explain the difference between presence and residence
- set out when the Appellant was present in Canada and the United States
- summarize the Minister's position
- summarize the Appellant's position
- explain why I disagree with the Minister and the Appellant

The difference between presence and 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.

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[4] See Article IX.1 of the *Second Supplementary Agreement Amending the Agreement Between the Government of Canada and the Government of the United States of America with Respect to Social Security*.
[5] The burden of proof is on the Appellant. See *De Carolis v Canada (Attorney General)*, 2013 FC 366.

[13] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.[6]

[14] A person is **present** in Canada when they are physically present in any part of Canada.[7]

[15] The *Old Age Security Regulations* (OAS Regulations) and the Agreement add to these definitions.

[16] Sections 21(4)(a) and (b) of the OAS Regulations say, "Any interval of absence from Canada of a person resident in Canada that is (a) of a temporary nature and does not exceed one year [or] (b) for the purpose of attending a school or university … shall be deemed not to have interrupted that person's residence or presence in Canada."

[17] Section 21(5.3) of the OAS Regulations says, "Where, by virtue of an agreement entered into under subsection 40(1) of the Act [which includes the Agreement with the United States], a person is subject to the legislation of a country other than Canada, that person shall, for the purposes of the Act and these Regulations, be deemed not to be resident in Canada."

[18] Article V of the Agreement says, "Except as otherwise provided in this Article, an employed person who works in the territory of one of the Contracting States shall, in respect of that work, be subject to the laws of only that Contracting State."

When the Appellant was present in Canada and the United States

[19] There is no dispute about when the Appellant was physically present in Canada and when he was physically present in the United States. The table below sets out his presence in each country since his 18th birthday.[8]

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[6] See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).
[7] See section 21(1)(b) of the OAS Regulations.
[8] See GD3-3, 4, GD5, GD6, and GD7.

start date	end date	days	country	notes
Feb. 16/75 (18th birthday)	Aug. 31/76	1 year 199 days	Canada	
Sept. 1/76	May 31/77	273	US	in school
Jun. 1/77	Aug. 31/77	92	Canada	
Sept. 1/77	May 31/78	273	US	in school
Jun. 1/78	Aug. 31/78	92	Canada	
Sept. 1/78	May 31/79	273	US	in school
Jun. 1/79	Aug. 31/79	92	Canada	
Sept. 1/79	May 31/80	274	US	in school
Jun. 1/80	Aug. 31/80	92	Canada	
Sept. 1/80	Mar. 31/81	212	US	playing hockey
Apr. 1/81	Oct. 1/81	184	Canada	
Oct. 2/81	Mar. 31/82	181	US	playing hockey
Apr. 1/82	Oct. 1/82	184	Canada	
Oct. 2/82	Mar. 31/83	181	US	playing hockey
Apr. 1/83	Oct. 1/83	184	Canada	
Oct. 2/83	Mar. 31/84	182	US	playing hockey
Apr. 1/84	Oct. 1/84	184	Canada	
Oct. 2/84	Mar. 31/85	181	US	playing hockey
Apr. 1/85	Oct. 1/85	184	Canada	
Oct. 2/85	present		US	playing hockey until Mar. 1987

The Minister's position

[20] When the Minister made its decision to grant the Appellant a pension of 5/40, it determined that he had resided in Canada from February 16, 1975, until June 29, 1980 (5 years and 135 days). The first date is when the Appellant turned 18. The second date is when the Minister thought he finished going to school in the United States. (In fact, the Appellant finished going to school on May 30, 1980.)[9] The Minister relied on section 21(4)(b) of the OAS Regulations to deem the Appellant to be resident in Canada throughout the time that he was a student in the United States.[10]

[21] Then, to give the Appellant 20 years of residence, the Minister relied on the Agreement. Under the Agreement, contributions to United States social security are measured in quarters of a year. One quarter of coverage equals three months of residence in Canada.[11] The Appellant had four quarters of coverage in every year from 1980 through 2022, for a total of 172 quarters.[12]

The Appellant's position

[22] The Appellant says he resided in Canada from February 16, 1975, until June 4, 1986 (11 years and 110 days). The first date is when he turned 18. The second date is the day before he became a permanent resident of the United States. Before that, he was in the United States on student visas and work visas.[13]

Why I disagree with the Minister and the Appellant

[23] I disagree with the Minister's position and the Appellant's position because they both ignore section 21(5.3) of the OAS Regulations and Article V of the Agreement.

[24] Section 21(5.3) deems the Appellant **not** to be resident in Canada when he was subject to the legislation of the United States under the Agreement.

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[9] See GD7.
[10] See the Minister's submissions at GD4.
[11] See Article VIII.2 of the Agreement.
[12] See GD2-20 and 21.
[13] See GD1-4.

[25] Article V of the Agreement says the Appellant was subject to the legislation of the United States "in respect of" his work there.

[26] The evidence shows that the Appellant was credited with four quarters (a full year) of social security contributions from work in the United States in 1980. This means he can't be considered resident in Canada for **any portion** of 1980 (or afterward), even if he was working in Canada and contributing to the Canada Pension Plan for some of that period.

[27] Section 21(5.3) and Article V take precedence over sections 21(4)(a) and (b) of the OAS Regulations.[14] Again, those sections say, "**Any interval of absence** from Canada of a person resident in Canada that is (a) of a temporary nature and does not exceed one year [or] (b) for the purpose of attending a school or university … **shall be deemed not to have interrupted that person's residence** or presence in Canada" (my emphasis).

[28] Put another way, a person's absence from Canada in these situations won't interrupt their residence. But something else could. That is what section 21(5.3) does by stating that the Appellant is deemed not to be resident in Canada. This means I can't consider him a resident of Canada after December 31, 1979.

[29] In summary, I find that the Appellant resided in Canada from February 16, 1975 (his 18th birthday) until December 31, 1979 (4 years and 319 days). The Agreement gives him at least 20 years of residence, but the Agreement doesn't change the amount of his pension. He qualifies for a partial OAS pension of 4/40.

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[14] In *Gumboc v Canada (Attorney General)*, 2014 FC 185 at paragraph 52, the Federal Court affirmed that section 21(5.3) and Article V "confirm that while working in the U.S., the applicant cannot argue for the purposes of the OAS to be a Canadian resident, regardless of any ties maintained to Canada. Put simply, because he is working in the U.S. and is subject to its social security legislation, [the applicant] is deemed to be a non-resident in Canada." See also *AA v Minister (Employment and Social Development)*, 2022 SST 270 at paragraph 33; and *IB v Minister (Employment and Social Development)*, 2021 SST 429 at paragraph 29.

A final note

[30] The Appellant believes that the report from the United States showing his quarters of coverage is incorrect.[15] However, I don't have the authority to change the information in this report. The report was prepared under the Agreement by United States officials relying on United States laws. If the Appellant wants the report to be amended, he would have to deal directly with officials in the United States.

Conclusion

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

[32] This means the appeal is dismissed and the Minister's decision is modified.

James Beaton
Member, General Division – Income Security Section

[15] See GD2-20 and 21.