



Citation: *NK v Minister of Employment and Social Development*, 2025 SST 753

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: N. K.
Representative: Utkarsh Tewari
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 28, 2024 (issued
by Service Canada)

Tribunal member: Virginia Saunders
Type of hearing: In Writing
Decision date: July 22, 2025
File number: GP-25-205

Decision

[1] The appeal is dismissed.

[2] The Appellant, N. K., isn't eligible for a full Old Age Security (OAS) pension. He is eligible for a partial OAS pension of 20/40. This is what the Minister of Employment and Social Development (Minister) initially granted.¹

[3] Payments start as of March 2024.

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

Overview

[5] The Appellant was born in India on February 19, 1959. He lived and worked in India and Australia before he came to Canada as a permanent resident on March 31, 2003. He has lived in Canada continuously since then.

[6] The Appellant applied for an OAS pension in June 2023. He said he wanted his pension to start as soon as he qualified.²

[7] The Minister granted the Appellant a partial pension of 20/40. This was based on the Appellant having resided in Canada for 20 full years from March 31, 2003, to February 18, 2024.³

[8] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

[9] The Appellant says he is entitled to a full OAS pension. He says he should get credit for additional residence based on Canada's social security agreements with India and Australia. He says that he also qualifies for a full pension under section 3(1)(b) of the *Old Age Security Act* (OAS Act).

¹ The Minister manages the Old Age Security programs for the Government of Canada.

² See GD2-13 to 19.

³ See the reconsideration decision at GD2-53.

What I have to decide

[10] I have to decide if the Appellant qualifies for a full pension under the social security agreements, or under section 3(1)(b) of the OAS Act.

Matters I have to consider first

I changed the deadline for the Appellant's reply

[11] The Appellant asked me to change the deadline for his reply from June 8, 2025, to July 3, 2025. I decided to change the deadline to that date. I gave my reasons in a letter on June 3, 2025.⁴

Reasons for my decision

[12] I find that the Appellant isn't eligible for a full OAS pension. He is eligible for the partial pension of 20/40 which the Minister awarded to him.

[13] Here are the reasons for my decision.

Why the Minister awarded a partial pension of 20/40

[14] To receive a **full** OAS pension, a person usually has to prove they resided in Canada for at least 40 years after they turned 18.⁵ There is an exception to this rule, which I discuss below.

[15] A person who doesn't qualify for a full OAS pension might qualify for a **partial** pension. They must prove they resided in Canada for at least 10 years after they turned 18. But, if they didn't reside in Canada the day before their application might have been approved, they must prove they already had 20 years of residence.⁶

⁴ See GD5.

⁵ See section 3(1)(c) of the *Old Age Security Act* (OAS Act). The Appellant also has to 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.

⁶ See section 3(2) of the OAS Act.

[16] 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.

[17] The Appellant proved that he had resided in Canada for 20 full years by the time he turned 65. The Minister accepted this. But the Appellant wants a full pension.

[18] The Appellant isn't claiming he **actually** resided in Canada for more than 20 years after he turned 18. He says he doesn't need to because he met other requirements to get a full OAS pension.

[19] I don't agree with the Appellant. There is no basis on which he qualifies for a full OAS pension. First, I will explain why he isn't eligible under section 3(1)(b) of the OAS Act. Then I will explain why Canada's social security agreements with India and Australia don't help him qualify.

The Appellant isn't eligible for a full pension under section 3(1)(b)

[20] The Appellant isn't eligible for a full OAS pension under section 3(1)(b) of the OAS Act.

[21] To be eligible for a full OAS pension without 40 years of residence, the Appellant had to meet the requirements in section 3(1)(b), which says:

- he had to be at least 25 years old on July 1, 1977
- he had to reside in Canada on July 1, 1977; if he didn't, he had to reside in Canada for any period after he turned 18 but before July 1, 1977, or he had to have a valid immigration visa during this period⁷
- he must be 65 years old, **and**
- he must have resided in Canada for 10 years immediately before his application could be approved

⁷ See *Flitcroft v Canada (Attorney General)*, 2012 FC 782.

[22] The Appellant argues that he qualifies because he met the last two requirements, which are set out in sections 3(1)(b)(ii) and (iii) of the OAS Act.

[23] However, the inclusion of the word “and” in the list of requirements means the Appellant has to meet **all** of them to qualify under this provision.

[24] The Appellant didn’t meet the first two requirements, which are in section 3(1)(b)(i). He was born on February 19, 1959. So, he wasn’t 25 years old on July 1, 1977. Even if he was, he didn’t meet the second requirement, because he didn’t reside in Canada or have a valid immigration visa between when he turned 18 and July 1, 1977.

[25] The Appellant relied on a decision of the Tribunal’s Appeal Division to support his argument that he only had to meet two of the three requirements.⁸ That decision doesn’t help the Appellant. It says “applicants [for an OAS pension] must meet the eligibility criteria set out in sections 3(1)(a), (b) or (c) of the OAS Act.” It does not say they qualify if they meet some, but not all, of the criteria in section 3(1)(b). In fact, the appellant in that case failed because he didn’t satisfy all of them.

[26] A decision of the Federal Court of Canada supports my interpretation. In that case, the applicants—like the Appellant—were 65 years old and had resided in Canada for the 10 years before their applications were approved. However, like the Appellant, they did not meet the requirements of section 3(1)(b)(i). As a result, they were not eligible for a full pension.⁹

Canada’s social security agreements do not help the Appellant qualify

[27] Canada has social security agreements with India and Australia.¹⁰ The Appellant argues that these agreements help him qualify for a full OAS pension.

[28] I find that neither agreement helps the Appellant qualify for a full pension.

⁸ See GD6-9, referring to *Minister (Employment and Social Development) v DR*, 2018 SST 954.

⁹ See *Flitcroft v Canada (Attorney General)*, 2012 FC 782.

¹⁰ The agreements are authorized by section 40 of the OAS Act.

[29] Both agreements have “totalizing” provisions. They say that some periods spent in the other country (India or Australia) can be added to a person’s residence in Canada.

[30] However, these provisions only apply if the person is not otherwise eligible for **any** OAS pension.¹¹ They don’t distinguish between a full or a partial pension. So, they would apply if the Appellant didn’t have 10 years of actual residence in Canada (or 20 years if he resided outside Canada the day before his application was approved). But the Appellant was eligible for an OAS pension anyway. This means the totalizing provisions don’t apply to him.

[31] Even if the totalizing provisions applied to the Appellant, they wouldn’t increase the size of his pension. This is because they can only be used to qualify for the pension. They don’t increase the amount. The amount of a partial OAS pension is based on the person’s actual residence in Canada, not residence that is added under an agreement.¹²

The Appellant had resided in Canada for 20 years when he turned 65

[32] A person **resides** in Canada if they make their home and ordinarily live in any part of Canada.¹³ As I noted above, there is no dispute that the Appellant started residing in Canada in March 2003, and was still residing here when he turned 65 years old in February 2024. By that time, he had resided in Canada for 20 years, so he got a partial pension of 20/40.

¹¹ See Article 15 of the *Agreement on Social Security Between Canada and the Republic of India* and Article 9 of the *Agreement on Social Security Between Canada and the Government of Australia*.

¹² See Article 12 of the *Agreement on Social Security Between Canada and the Republic of India* and Article 10 of the *Agreement on Social Security Between Canada and the Government of Australia*.

¹³ See section 21(1)(a) of the *Old Age Security Regulations* (OAS Regulations).

When payments start

[33] OAS pension payments start the first month after the pension is approved.¹⁴ The Appellant's pension was approved in February 2024.¹⁵ So payments start in March 2024.

Conclusion

[34] The Appellant is eligible for a partial OAS pension of 20/40. This is what the Minister initially granted.

[35] This means the appeal is dismissed.

Virginia Saunders
Member, General Division – Income Security Section

¹⁴ See section 8(1) of the OAS Act.

¹⁵ 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 February 2024. See section 8 of the OAS Act and section 5 of the OAS Regulations.