Citation: *NE v Minister of Employment and Social Development*, 2026 SST 124

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	N. E.
Respondent:	Minister of Employment and Social Development
Representative:	Viola Herbert

Decision under appeal:	General Division decision dated April 10, 2025 (GP-24-1896)

Tribunal member:	Jean Lazure
Type of hearing:	In person
Hearing date:	October 15, 2025
Hearing participants:	Appellant Respondent's representative
Decision date:	February 23, 2026
File number:	AD-25-361

Decision

[1] The appeal is allowed.

[2] I find that the Appellant, N. E., has accumulated 10 years and 254 days of residence in Canada. He is eligible for a partial Old Age Security (OAS) pension of 10/40.

Overview

[3] The Appellant applied for an OAS pension and the Guaranteed Income Supplement (GIS) on March 25, 2023.[1] The Minister of Employment and Social Development (Minister) refused his application, on initial decision and upon reconsideration.[2]

[4] The Appellant appealed that decision to the General Division of the Social Security Tribunal (Tribunal).[3] The General Division held a hearing on October 9, 2024, and dismissed his appeal.[4] The Appellant asked for leave to appeal that decision to the Tribunal's Appeal Division. Leave to appeal was granted on January 17, 2025.[5]

Preliminary matters

I admitted a post-hearing document

[5] On October 21, 2025, six days after the hearing into this matter, the Appellant filed a document.[6] This document had not been solicited by the Tribunal or the Minister. I accepted the document, for the following reasons.[7]

[6] First, I find that the document is relevant. Second, I think that accepting it would not be unfair to the Minister, as the document is essentially the oral testimony the

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[1] See GD2-6.
[2] See GD2-30 for initial decision dated August 28, 2023. See GD2-137 for reconsideration decision dated May 1, 2024.
[3] On November 3, 2024, page GD1-1.
[4] On April 8, 2025.
[5] Leave to appeal was requested on May 12, 2025, see AD1-1.
[6] See AD6-1.
[7] I applied the test found at section 42 of the *Social Security Tribunal Rules of Procedure,* SOR/2022-256.

Appellant gave at the hearing. The Minister was therefore able to speak to its content at the hearing. Finally, as per usual, the document was circulated to the Minister and the Minister did not object to it, likely for the same reasons above. The Minister neither asked for permission to present further submissions nor presented such submissions.

A hearing before the Appeal Division is a new proceeding and I am not bound by the General Division's decision

[7] In a written submission to the Appeal Division filed before the hearing, the Appellant relied on findings made by the General Division in its decision.[8] These findings were in his favour, and I believe it was the Appellant's hope that I would be bound by these findings.

[8] At the outset of the Appeal Division hearing into this matter, I explained to the Appellant that a hearing before the Appeal Division is a *de novo* hearing, an entirely new proceeding.[9] I said to the Appellant at the hearing that in his written submissions, when he says "confirmed by GD", I cannot rely on the General Division's findings.

[9] However, the Appellant also included the mentions "Confirmed by GD" in his post-hearing submission, which I discussed above.[10]

[10] I emphasize that in proceedings before the Appeal Division, once leave is granted, we are essentially starting over.[11] And while the evidence before the General Division can be relied upon, we proceed at the Appeal Division as if the General Division hearing and decision never happened. The General Division decision does not bind me in any way.

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[8] See AD5-4.
[9] See section 58.3 of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34.
[10] See AD6-5.
[11] At least in the Income Security Section, per section 58.3 of the *Act* cited in footnote 9.

Issue

[11] To receive a **full** OAS pension, an appellant must prove that they resided in Canada for at least 40 years after having reached the age of 18.[12] There are certain exceptions to this rule. However, these do not apply to the Appellant.[13]

[12] If an appellant is not eligible for a full OAS pension, they may be eligible for a **partial** pension. An appellant must have resided at least 10 years in Canada after reaching the age of 18 to be eligible for a partial pension.[14]

[13] A partial pension depends on the number of years (out of 40) during which a person has resided in Canada after reaching the age of 18. For example, a person having accumulated 12 years of Canadian residence will receive a partial pension of 12/40 of the amount of a full pension.

[14] So, for me to allow the Appellant's appeal, he must prove to me that he was a resident of Canada for a period of at least 10 years after having reached the age of 18.

[15] It is uncontested that the Appellant has accumulated periods of residence in Canada of 7 years and 291 days. I will return to this below.[15]

[16] Therefore, the issue in this appeal is the following:

> Has the Appellant accumulated at least 2 years and 74 days of Canadian residence in the periods that are contested by the Minister to reach the minimum of 10 years for a partial OAS pension?

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[12] Per subsection 3(1)(c) of the *Old Age Security Act,* R.S.C. 1985, c. O-9. The appellant must also have reached at least 65 years of age and must be a Canadian citizen or legal resident of Canada. They also must have applied for the pension. The appellant has fulfilled these requirements.
[13] See subsection 3(1)(b) of the *Act*.
[14] Or at least 20 years if they are not a resident of Canada on the day preceding the day on which their application is approved, subsection 3(2)(b) of the *Act.*
[15] See paragraphs 22 and 23 below.

Analysis

[17] I have considered the law and the evidence and have determined that the Appellant is eligible for a partial pension of 10/40. My reasons are below.

What the Appellant must prove

[18] As I said above, the OAS Act allows claimants to receive a partial pension when they are not eligible for a full pension. A claimant must have resided in Canada for a minimum of ten years after the age of 18 but less than 40 years in order to receive a partial pension.[16] The calculation of a partial pension is 1/40 of the full pension for each complete year of residence in Canada after the age of 18.[17]

[19] The applicable legal criteria for residence are set out in Canada (Minister of Human Resources) Development v. Ding*[18]*. I am to consider several factors in determining whether the residence conditions have been met:

- ties in the form of personal property;
- social ties in Canada;
- other fiscal ties in Canada (medical coverage, driver's licence, rental lease, tax records, etc.);
- ties in another country;
- regularity and length of visits to Canada, as well as the frequency and length of absences from Canada;
- and the lifestyle of the person or his establishment in Canada.

[20] Finally, the Appellant has the burden to prove Canadian residence[19].

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[16] See subsection 3(2) of the *Old Age Security Act.*
[17] See subsection 3(3) of the *Old Age Security Act.*
[18] 2006 FC 76.
[19] An Appellant must prove that it is **more likely than not** that he/she was a resident of Canada, per *De Carolis v. Canada (Attorney General)*, 2013 FC 366, and *L-79404 v. MSD* (2004) (RT).

As of October 15, 2025, the Appellant has accumulated 10 years and 254 days of residence in Canada

[21] I find that as of the hearing held on October 15, 2025, the Appellant has accumulated 10 years and 254 days of residence in Canada.

– Periods of Canadian residence admitted by the Minister

[22] The Minister has admitted the following periods as residence in Canada:

- July 16, 2001 to July 31, 2008;[20] and
- August 1, 2023 to May 1, 2024;[21]

[23] By my calculation, the Minister admits that the Appellant has been a resident of Canada for 7 years and 291 days.[22] Considering this admission by the Minister, I will not further analyze the evidence for these periods. I therefore count 7 years and 291 days of residence in Canada for the Appellant before addressing the contested periods.

– Contested periods

[24] I will break up the periods for which the Minister contests that the Appellant was a Canadian resident as follows:

- August 1, 2008 to December 16, 2017;
- December 17, 2017 to December 1, 2018;
- December 2, 2018 to February 5, 2023;
- February 6, 2023 to July 31, 2023;
- May 2, 2024 to October 15, 2025.

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[20] I count 7 years and 16 days of Canadian residence for this first period.
[21] I count 275 days for this second period. For both periods, see the *Reconsideration Decision Letter* dated May 1, 2024, at GD2-237. See also paragraph 10 at AD4-6 and paragraph 40 at AD4-13.
[22] I believe the Minister's calculation in their *Reconsideration Decision Letter* – at 7 years, 10 months, and 17 days – likely to be inaccurate. For accuracy's sake, I will count residence in days and years.

[25] I will discuss these periods one after the other.

- **August 1, 2008 to December 16, 2017**

[26] I find that the Appellant was not a resident of Canada during this period.

[27] The Appellant does not seem to contest that he was not a resident of Canada during this period. His related written submissions are as follows:

- "…I am not disputing my residency issue between (August 2008 and December 2017)…[23]

- Regarding this approximate period, the Appellant called his residency "Intermittent" and also said it was "Not disputed";[24]

- In his final written submission, the Appellant said: "During this period, I was travelling for work abroad. But I maintained strong residential ties to Canada. My family continued to live in our home in Scarborough, my children attended school and university here, and I maintained my Canadian bank account, paid my mortgage, and filed my tax returns every year. However, I respect the General Division's decision not to count this period due to my extended absences."[25]

[28] At the hearing, the Appellant said he "respected the General Division and Minister's decisions of not considering this period considering my extended absences."[26]

[29] The Minister produced a record of the Appellant's presence and absence in Canada during this period, which lasts about nine years in total.[27] In total, during those nine years, the Appellant spent a little more than 20 months in Canada, or a little over 2 months a year on average. There were eight different stays, and his average stay lasted

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[23] See AD1-34.
[24] See AD5-4. Though the Appellant references this period as "August 17, 2008 to December 17, 2017".
[25] See AD6-2.
[26] Per paragraphs 7 to 10 above, I reiterate that I am not bound by the General Division's decision.
[27] See AD4-9 and AD4-10. See also GD2-28, GD2-39, GD2-49, GD2-52,

about 2.5 months. His longest stay in Canada during that time was 3.5 months and his shortest was a bit shy of a month.

[30] The Appellant was a freelance consultant engineer during that time, working in the United Arab Emirates and Palestine.[28] There were also two trips to Turkey. None of the exceptions provided by the OAS Act apply to the Appellant's absences during this period. And as indicated above, though the Appellant maintained some ties with Canada during this period, he did not seem to dispute these absences from Canada.

[31] I find that the Appellant's absences from Canada to be incompatible with a finding of Canadian residence. For any given year during this period, the Appellant cannot even make the argument that Canada is the country where he spends the most time. There is simply too little presence in Canada.

[32] I therefore find that the Appellant was not a resident of Canada for the period from August 1, 2008 to December 16, 2017.

- **December 17, 2017 to December 1, 2018**

[33] I find that the Appellant was a resident of Canada during this period.

[34] In all of his written submissions, the Appellant strongly asserts that he reestablished his residence in Canada during this period:

- His wife passed away on July 26, 2017, and he came back to Canada on December 17, 2017: "I resumed living in my Canadian home, actively paid household expenses, and was physically present for all of 2018, with only brief travels to manage family matters abroad." He also said that during that year, he "maintained a Canadian residence and utilities", "engaged with the Canadian health care system", and "maintained banking and community ties";[29]

[28] See AD4-9 and AD4-10, as well as GD2-28.
[29] See AD1-35.

- The Appellant said he only took “two brief trips abroad (Turkey, Malaysia, and Kuwait). These trips were temporary in nature, and I stayed only in hotels.” He further said that he filed Canadian tax returns;[30]

- In his final written submission, the Appellant added the exact dates of those trips and added the United Kingdom and Cairo as places he visited. He specified that these trips lasted a total of 77 days.[31]

[35] At the hearing, the Appellant reiterated that his “primary home was in Canada and he remained in Canada”, also saying: “I returned to Canada to reestablish my residency following the death of my late wife, who passed away in Gaza while I was working abroad.”

[36] The Minister indicated that during this period, the Appellant was in Canada for 8 months and 28 days.[32] The Minister concluded that: “Given the frequency and lengthy duration of the Appellant’s absences from Canada, which have been consistent over the years, the Minister takes the position that the Appellant was not a Canadian resident as defined under the *OAS Act* for the period August 2008 to February 6, 2023.”[33]

[37] I disagree with the Minister that this year fits the consistent pattern established by the Appellant from August 1, 2008 to December 16, 2017. His wife unfortunately passed away earlier in 2017, and that marked an important change in the Appellant’s life. He returned to Canada to be close to his children and grandchildren.

[38] From 2008 to 2017, the Appellant had routinely travelled abroad for extended periods each year to work in Palestine and the United Arab Emirates. It was apparent that from 2008 to 2017, the Appellant was living abroad and returning to be present in Canada.

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[30] See AD5-2.
[31] See AD6-3.
[32] See paragraph 39, AD4-13.
[33] See paragraph 40, AD4-13.

[39] During this particular period, the Appellant visited none of the countries he had worked in from 2008 to 2017. His stays were in hotels and were significantly shorter than they were from 2008 to 2017. He was in Canada 273 of the 350 days of this period.[34] And the purpose of his trips was not related to work but rather to family matters.

[40] The Appellant also filed evidence of his credit card activity in Canada throughout most of this period, as well as medical visits later in the period.[35] Finally, the Appellant not only owned a home in Canada – as he did the previous period as well - but he was actually living in it throughout this period, notwithstanding his two trips abroad.

[41] This is not at all the same pattern as from 2008 to 2017. I believe that the Appellant established Canadian residence during this period.

[42] I therefore find that the Appellant was a resident of Canada for the period from December 17, 2017 to December 1, 2018. I count 350 days during this period.

- **December 2, 2018 to February 5, 2023**

[43] I find that the Appellant was not a resident of Canada during this period.

[44] The Appellant has repeatedly characterized this period as one of "involuntary temporary absence".[36] He indicated having married his new wife in Gaza, Palestine, in January 2019. He said that he had every intention of returning to Canada as soon as possible with his wife but that this was impossible because there was a significant delay in having his wife's application as a permanent resident processed and approved. His written submissions provide the following, most notably in regards to his intent:

- "These delays were entirely beyond my control and does (*sic*) not reflect any change in my residency intent."[37]

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[34] See AD6-3. The Minister's count is "8 months and 28 days" (see AD4-13), which I find less precise, but could work out to about 271 days if one averages a month to 30.417 days (365 days / 12 months). 271 days is close to 273.
[35] See GD2-65 to GD2-76, and GD4-4.
[36] See AD1-35, AD5-2, and AD6-3 and AD6-4.
[37] See AD1-35.

- "These steps demonstrate my consistent and serious efforts to return to Canada. They also prove that my absence was involuntary and temporary, caused by immigration delays and my need to avoid leaving my wife alone abroad."[38]

- "These steps prove that (…) my clear intention to return to Canada as soon as possible to resume my residence which I established in (*sic*) since Dec 2017 and through the year 2018."[39]

- "This situation aligns with the principles in the *Old Age Security Regulations,* which allow for absences due to circumstances beyond one's control.*"*[40]

[45] The Appellant reiterated this at the hearing, that his "absence was prolonged by factors completely out of my control".

[46] The Minister's chart regarding the Appellant's presence and absence in Canada shows fairly little presence in Canada during this period, which lasts approximately 50 months. The Appellant seems to spend approximately 7.5 months in Canada during this time, or about 15 per cent of the time.

[47] This is very little presence by the Appellant in Canada, which I do not believe the Appellant disputes. Again, the Appellant points to the fact that his absence from Canada is involuntary, temporary, and due to factors beyond his control. He says he intended to be a Canadian resident. As such, per the *OAS Regulations,* he says this time should be counted as residence.

[48] I cannot agree with the Appellant's arguments. First, the *Regulations* say that a "temporary" absence is less than one year.[41] At a little over four years, the Applicant's absence cannot be deemed temporary.

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[38] See AD5-3.
[39] See AD6-4.
[40] See AD6-4. See *Old Age Security Regulations,* C.R.C. c. 1246.
[41] See subsection 21(4)(a) of the *OAS Regulations.*

[49] Second, residence is a matter of fact, not intent. The intent to reside does not equal residence. Contrary to what the Appellant says, the Federal Court does not list "intent" in its multi-factor test in *Ding.*[42] The Court rather says:[43]

> …residency is a factual issue that requires an examination of the whole context of the individual under scrutiny. In the case of Mrs. Ding there were many factors that needed to be addressed and taken into account and "her obvious intentions" should not have been the basis of the test that the Board applied.

[50] The Appellant was mostly absent from Canada during this particular period.[44] Even if I considered the Appellant's intent, in the face of such continued absences from Canada, I could not his intent to bridge such significant gaps in presence in Canada.

[51] Finally, the *Regulations* provide exceptions that could apply to a person's continued absence from Canada, to indicate that such an absence would not interrupt a person's Canadian residence.[45] I sympathize with the Appellant, who testified sincerely as to how he diligently stayed with his wife while her immigration status was resolved.

[52] However, unfortunately, none of the exceptions in the *Regulations* apply to the Appellant's particular situation. And contrary to what the Appellant says, I cannot use the spirit of the law to have the exceptions in the *Regulations* say something they don't.[46]

[53] I therefore find that the Appellant was not a resident of Canada for the period from December 2, 2018, to February 5, 2023.

- **February 6, 2023 to July 31, 2023**

[54] I find that the Appellant was a resident of Canada during this period.

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[42] See AD5-3.
[43] See paragraph 58 of *Ding*, see footnote 18.
[44] 85 per cent abroad, as indicated in paragraph 46.
[45] See subsections 21(4)(c) and 21(5) of the *OAS Regulations.*
[46] See AD5-3, where the Appellant says "The principle this act reflect (*sic*) supports my case."

[55] It is with some surprise, even shock, that the Appellant wondered aloud at the hearing as to why the Minister recognized him as being a resident from August 1, 2023, going forward, while not from February 6 to July 31, 2023. The Appellant also expressed this in his written submissions:

- "In fact, I re-established residence on February 6, 2023, and have remained continuously in Canada since then with the exception of two very brief trips."[47]

- "On February 6, 2023, my wife and I returned to Canada and resumed residency in our home. We have been continuously present in Canada since then, with only two short trips. (…) So, it is surprising that the Minister's last submission refers to August 1, 2023, as my date of return."[48]

[56] The Appellant said at the hearing that he has been continuously present in Canada since then, with only two short trips that lasted three to four weeks in total. Both were trips to Turkey, and the Appellant stayed in hotels. The Appellant also said that "he doesn't have much work anymore."

[57] The Minister's written submissions recognizes in two separate instances that the Appellant returned to live in Canada in February 2023:

- The Minister's chart of presences and absences, which is contained in submissions filed in July 2025, lists the Appellant's time outside of Canada from August 16, 2008 to February 2023;[49]

- The Minister further states in those submissions that the Appellant "…returned to live in Canada in February 2023."[50]

[58] However, the Minister also says that "The evidence in the Appellant's file demonstrates that he was not a resident of Canada from August 16, 2005 (*sic*) to

[47] See AD5-3.
[48] See AD6-4.
[49] See AD4-9 and AD4-10.
[50] See paragraph 22, AD4-11.

February 5, 2023."[51] This is consistent with the Minister's *Reconsideration Decision Letter*, which recognizes the Appellant's residence as of August 1, 2023.[52]

[59] The evidence shows that the Appellant and his wife returned to live in Canada on February 6, 2023. All of the Appellant's ties to Canada – including the fact that he owns a home, his children, his grandchildren, etc. – remain. He has barely left Canada since February 2023. I fail to see what differentiates this almost-six-month period from February 6, 2023, to July 31, 2023, from the period that follows it – and that period was recognized as residence by the Minister.

[60] I therefore find that the Appellant was a resident of Canada for the period from February 6 to July 23, 2023. I count 176 days during this period.

- **May 2, 2024 to October 15, 2025**

[61] I find that the Appellant was a resident of Canada during this period.

[62] Again, the Appellant said at the hearing that he and his wife have been continuously present in Canada from February 2023 to date, save for two short trips. All of the Appellant's ties to Canada – including the fact that he owns a home, his children, his grandchildren, etc. – remain.

[63] Nothing differentiates this period from the period prior to it – which was recognized as residence by the Minister - except that testimony had yet to be provided by the Appellant about it. The Appellant provided that testimony at the hearing.[53] As I stated above, I found that the Appellant testified sincerely. I've no reason to doubt that he was telling the truth.

[64] I therefore find that the Appellant was a resident of Canada for the period from May 2, 2024 to October 15, 2025. I count 1 year and 167 days during this period.

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[51] See paragraph 17, AD4-8, though the Minister likely meant August 2008.
[52] See GD2-137.
[53] See paragraph 56 above.

[65] Finally, if I add up the Appellant's different periods of Canadian residence, my count is as follows:

- Periods admitted by the Minister from the outset – 7 years and 291 days;
- December 17, 2017 to December 1, 2018 – 350 days;
- February 6 to July 23, 2023 – 176 days;
- May 2, 2024 to October 15, 2025 – 1 year and 167 days;
- TOTAL – 8 years and 984 days, or 10 years and 254 days.

Conclusion

[66] I find that the Appellant has accumulated 10 years and 254 days of residence in Canada. He is eligible for a partial Old Age Security pension of 10/40.

[67] This means the appeal is allowed.

Jean Lazure
Member, Appeal Division