

Docket: 2020-3(OAS)

BETWEEN:

ABDALLAH IBRAHIM,

Appellant,

and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT,

Respondent.

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Appeal heard by Written Arguments

The Honourable Eugene P. Rossiter, Chief Justice

Participants:

For the Appellant: The Appellant himself

Counsel for the Respondent: Annie Laflamme

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**JUDGMENT**

The appeal made under the *Old Age Security Act* is dismissed in accordance with the attached Reasons for Judgment.

Signed at Ottawa, Canada, this 28th day of September 2021.

“E.P. Rossiter”

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Rossiter C.J.

Citation: 2021 TCC 64

Date: 20210928

Docket: 2020-3(OAS)

BETWEEN:

ABDALLAH A. IBRAHIM,

Appellant,

and

THE MINISTER OF EMPLOYMENT AND SOCIAL DEVELOPMENT,

Respondent.

### **REASONS FOR JUDGMENT**

Rossiter C.J.

[1] In this matter, the relevant facts are as follows:

- a) In 2009, the Appellant applied for and was granted a partial Old Age Security (“OAS”) pension and Guaranteed Income Supplement (“GIS”) beginning in August 2009 at a rate of 23/40th. This amount was based on the Appellant’s residency declaration.
- b) The Appellant was born in Egypt in 1944, and reached the age of 65 in July 2009.
- c) The Appellant arrived in Canada as a landed immigrant in April 1975.
- d) After arriving in Canada, the Appellant worked in Saudi Arabia for multi-year stretches on and off, and resided in Egypt before returning to Canada in April 2009 before his application for OAS.
- e) The Appellant had his OAS and GIS suspended twice by the Minister of Employment and Social Development (the “Minister”) - both times he left Canada longer than six months and returned to Egypt. The second time he did not inform the Minister until his return. On his return, the Minister asked to validate his income as there was a

discrepancy in his reported income to the Canada Revenue Agency (“CRA”) and his GIS renewal.

- f) On March 31, 2017 the Appellant filed a GIS renewal form and declared a \$420 per annum Egyptian pension (\$35 per month). The Minister sent the file to the integrity division to investigate the exact period of absence and the Appellant’s income. The investigation gave rise to further periods of absence, the admission of an apartment in Egypt, and the Egyptian pension confirmed since 2009.
- g) The Appellant’s residence in Canada was subsequently reduced to 18 years and 59 days in Canada. After the Appellant applied for a reconsideration, the Minister reversed the decision and increased his residency period to 20 years. The Appellant appealed this to the Social Security Tribunal (“SST”). The SST held the Appellant was a resident for 20 years and the Minister recalculated the Appellant’s income according to information from the CRA and added a foreign pension.
- h) The Appellant appealed again to the SST on April 1, 2019.
- i) The Appeal was referred to the Tax Court of Canada on December 11, 2019 in accordance with subsection 28(2) of the *Old Age Security Act*, R.S.C., 1985, c. O-9 (“OASA”).
- j) At appeal are the periods March 2017 to June 2017, July 2017 to June 2018, and July 2018 to March 2019. This encompasses base calendar years 2015, 2016, and 2017.

### Positions of the Parties

[2] The Appellant’s argument is that he has never received a foreign pension, and the amounts he received from the Syndicate of Egyptian Engineers each month are a minor amount of financial assistance paid by a non-profit private organization. He also claims unfairness, delay, nefarious conduct including breach of privacy by Service Canada in the handling of his file.

[3] The Respondent’s position is that the only identifiable issue is the inclusion of the Appellant’s foreign pension in his income for calculation of his GIS.

### ISSUE

[4] The issue before the Court is whether the Appellant's pension from the Syndicate of Egyptian Engineers is included in the calculation of his income for GIS computation.

## LAW

### *(1) Jurisdiction of the Tax Court of Canada under the Old Age Security Act*

[5] The Tax Court of Canada's jurisdiction is found in subsection 28(2) of the OASA.

[6] The appeals relating to benefits are appealable to the SST and judicial review of a decision of the SST relating to benefits is available under the *Federal Courts Act*, R.S.C., 1985, c. F-7.

[7] Justice Bowie in *Taylor v Canada*, 2005 TCC 496 noted at paragraphs 4 and 5, that Court's jurisdiction is defined by Parliament as restrained to income determination. Matters such as the Minister's redetermination of an entitlement and seeking to recover overpayments after the payments were made is not within the jurisdiction of the Court.

[8] We are concerned with whether the decision of the Minister as to the income or income from a particular source or sources of the Appellant was incorrectly made.

### *(2) Income Inclusion for GIS Purposes*

[9] For OAS purposes, income for the calendar year is calculated in accordance with the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supp.) ("ITA") with specific exceptions for certain amounts of office and employment income, self-employment earnings, and other specified amounts.

[10] The payment period under OASA begins July 1 of one year and ends on June 30 the next year. The amount paid is calculated from the base calendar year, which is the last calendar year ending before the current pay period.

[11] Since the income for OAS purposes is computed in accordance with the ITA, section 3 applies and the taxpayer is taxed on their worldwide income from sources in and out of Canada. Additionally, paragraph 56(1)(a) of the ITA states that a taxpayer will include in their income any superannuation or pension benefit.

“Pension” for the purpose of section 56 is not defined in the section, or in section 248.

[12] In *Bakht v Canada*, 2002 FCA 252, the Federal Court of Appeal upheld the decision of Associate Chief Justice Bowman, as he then was, that a foreign pension must be included when calculating income for the purposes of the GIS. Furthermore, the Court upheld Associate Chief Justice Bowman’s position that the appellant could not deduct the amount allowed by subsection 118(3) as it did not provide a deduction for the computation of income; it provides a deduction for taxes payable. Neither the Federal Court of Appeal nor the Tax Court of Canada decisions stated whether the pension was a private or public pension.

[13] In *Fang v The Queen*, 2016 TCC 166, the Tax Court of Canada was faced with the question of whether or not the appellant’s spouses Italian social assistance payments were to be included in his GIS income determination. As stated by Justice Miller, if the amount is a foreign retirement arrangement not subject to tax in Italy as contemplated by clause 56(1)(a)(i)(c.1) of the ITA, it would not be included in income for purposes of determining the eligibility to GIS. If it was a social assistance payment made on the basis of means, needs or income test, it would be included in income for purposes of determining the GIS eligibility. Justice Miller held the Italian payments were the later as the spouse did not make pension contributions and it was a means based program. The amounts were to be included in her husband’s income calculation.

### (3) *Canada-Egypt Tax Treaty Rule on Pensions*

[14] Pensions are taxable in both Canada and Egypt under the Canada-Egypt Tax Treaty. As stated in Article 18 of the Treaty, pensions and annuities arising in a contracting state to a resident of the other contracting state may be taxed in both contracting states. While “annuities” is defined in the Article, it does not limit the application of the Article to a specific type of pension.

## ANALYSIS

### (1) *The Foreign Pension is Included in the Appellant’s Income*

[15] The Appellant's pension from the Syndicate of Egyptian Engineers is included in the Appellant's income for the computation of the GIS.

[16] The Tax Court of Canada's jurisdiction in this matter is exclusively related to the Appellant's income computation for GIS purposes. As in the case of *Taylor* with Justice Bowie, the Appellant's main contention is the decision of the Minister towards his benefits and the Minister's perceived unfairness. This is outside the scope of the Tax Court of Canada's jurisdiction and more within the realm of judicial review of the SST's decision.

[17] In the Appellant's own words, he receives a "very small monthly financial assistance from the Syndicate of Egyptian Engineers, these financial assistances are paid monthly to the retired engineers..." As a member of the syndicate, the Appellant could begin collecting amounts from the syndicate from age 60 once retired. Under paragraph 56(1)(a) of the ITA, it appears the Syndicate Pension is not subject to any of the exceptions in sub-clauses D through G. The amounts are included in income for GIS income determination purposes.

[18] In the unlikely case that the amounts were not considered a "pension," it is likely that the amounts are caught under section 3 of the ITA alone and would be included in the GSI income determination. As stated in subsection 3(a), the income of an individual for a year is the total amounts from a source inside or outside Canada. In *Bellingham v Canada*, [1996] 1 FC 613, the Federal Court of Canada – Court of Appeal cited *R v Cranswick*, [1982] 1 FC 813, for the traditional common law indicia (each relevant but not conclusive) of a windfall gain versus income from a source:

- (a) The taxpayer had no enforceable claim to the payment;
- (b) There was no organized effort on the part of the taxpayer to receive payment;
- (c) The payment was not sought after or solicited by the taxpayer in any manner;
- (d) The payment was not expected by the taxpayer, either specifically or customarily;
- (e) The payment had no foreseeable element of recurrence;

- (f) The payor was not a customary source of income to the taxpayer;
- (g) The payment was not in consideration for or in recognition of property, services or anything else provided or to be provided by the taxpayer; it was not earned by the taxpayer, either as a result of any activity or pursuit of gain carried on by the taxpayer or otherwise.

[19] It is clear from the information provided by the Appellant, albeit it is only a small amount of information, that as a member of the syndicate he is owed a pension at the age of 60 upon his retirement as an engineer. As a member of the syndicate, he paid what are in essence yearly dues. There was an organized effort on the part of the taxpayer to receive the amounts, as he had to apply for the benefit; this also demonstrates solicitation by the Appellant. The payment recurred each month and was a regular (if small) source of income for the Appellant. Indicia (g) is likely to be satisfied because the Appellant was required to be a licensed engineer and pay his dues to the syndicate in order to be eligible for the pension. As small as the pension might be, it meets all the criteria of income from a source and should be included in the Appellant's income for GIS income determination purposes.

[20] The Appellant's appeal is dismissed.

Signed at Ottawa, Canada, this 28th day of September 2021.

“E.P. Rossiter”

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Rossiter C.J.

CITATION: 2021 TCC 64

COURT FILE NO.: 2020-3(OAS)

STYLE OF CAUSE: ABDALLAH IBRAHIM AND THE  
MINISTER OF EMPLOYMENT AND  
SOCIAL DEVELOPMENT

REASONS FOR JUDGMENT BY: The Honourable Eugene P. Rossiter, Chief  
Justice

DATE OF JUDGMENT: September 28, 2021

PARTICIPANTS:

For the Appellant: The Appellant himself  
Counsel for the Respondent: Annie Laflamme

COUNSEL OF RECORD:

For the Appellant:

Name: n/a

Firm:

For the Respondent: François Daigle  
Deputy Attorney General of Canada  
Ottawa, Canada