

SOCIAL SECURITY ADMINISTRATION
OFFICE OF HEARINGS AND APPEALS

DECISION OF THE APPEALS COUNCIL

In the case of


Claim for


(Claimant)

Old-Age Insurance Benefits

(Wage Earner) (Leave Blank if same as above)


(Social Security Number)

 v. Commissioner of Social Security Administration
United States District Court for the District of Columbia
Civil Action Number 04-0431(RMU)

Pursuant to a court order issued on June 30, 2004, this case was remanded to the Commissioner in accordance with sentence four of 42 U.S.C. 405(g) to consider the petitioner's claim in matters relating to the application of the windfall elimination provision of the Social Security Act. Because this decision is fully favorable to the claimant, the Appeals Council did not issue a separate notice advising of its action.

The Administrative Law Judge found that the claimant became entitled to a pension from the National Insurance Institute of Israel (NII) on September 29, 2000 and that, because this pension is based on work not covered by the United States Social Security Act, his U.S. Social Security old-age insurance benefits were properly reduced, pursuant to the windfall elimination provision (WEP) of section 215(a)(7) (A)&(B) of the Social Security Act.

The Appeals Council adopts the Administrative Law Judge's statements regarding the pertinent provisions of the Social Security Act, Social Security Administration Regulations, Social Security Rulings and Acquiescence Rulings, the issues in the case, and the evidentiary facts, as applicable. The Appeals Council does not adopt the Administrative Law Judge's finding and conclusion that the claimant's old-age insurance benefits are subject to the WEP provision of the Social Security Act.

When the claimant initially filed an application for old-age insurance benefits, he indicated that he was receiving a pension from the NII which was based on his employment in Israel for the period from September 1971 through September 2000. Based on this information, the Social Security Administration properly applied the WEP provision of the Act, reducing the claimant's old-age insurance benefits.

On appeal, the claimant submitted letters from NII indicating that the pension he was receiving was based on his being a resident of Israel and contributions. Clarifying the Israel pension system from which the claimant receives a pension, the NII indicated that "earnings or lack of earnings are not a factor in determining eligibility or the amount of the benefit. A person's employment or lack of employment is not a factor in determining eligibility or the amount of the benefit." In essence, the NII verified that the pension received by the claimant is not based, in whole or in part, upon work. Rather, the pension is based entirely upon nonwork-related factors such as his resident status and contributions into the pension system.

The Social Security Administration's policy clarifying this issue provides that "a foreign pension based on employment not covered by U.S. Social Security is treated as any other pension based on non-covered employment. However, WEP does not apply if the foreign pension is based on factors other than work, e.g., residence, voluntary contributions or financial need" (POMS RS 00605.372C.1). Because the pension received by the claimant from the NII is based solely on his residency status and contributions to the Israel pension system, the Appeals Council finds that WEP does not apply. Accordingly, the Appeals Council directs the proper component of the Social Security Administration to recalculate the claimant's old-age insurance benefits by disregarding the pension the claimant receives from NII.

DECISION

It is the decision of the Appeals Council that the claimant's benefits from the National Insurance Institute of Israel are not subject to the windfall elimination provision of the Social Security Act. The Administrative Law Judge's decision is reversed

APPEALS COUNCIL

ORIGINAL SIGNED BY

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C. Michael Sullivan
Acting Administrative Appeals Judge

Date: SEP 3 2004