



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *ES v Minister of Employment and Social Development*, 2022 SST 1671  
Tribunal File Number: GP-22-1509

BETWEEN:

**E. S.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security**

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DECISION BY: Adam Picotte

DATE OF DECISION: October 14, 2022

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] The Respondent denied the Appellant's application for benefits at the initial level and on May 5, 2021 denied the application at the reconsideration level. The Appellant appealed that decision to the Social Security Tribunal (Tribunal) on August 31, 2022

### **ISSUE**

[2] The Tribunal must decide whether the appeal was brought in time.

### **THE LAW**

[3] Under subsection 52(2) of the *Department of Employment and Social Development Act* (DESD Act), in no case may an appeal be brought to the General Division of the Tribunal more than one year after the day on which the Respondent's reconsideration decision was communicated to the Appellant.

### **APPELLANT'S SUBMISSIONS/EVIDENCE**

[4] The Appellant submitted a lengthy letter respecting the reasons for which she did not apply for a Division of unadjusted pensionable earnings in 1983.<sup>1</sup>

### **ANALYSIS**

[5] The Tribunal finds that the Respondent's reconsideration decision was communicated to the Appellant by the end of May 2021. The reconsideration decision is dated May 5, 2021.

[6] The Tribunal finds that the Appellant brought the appeal to the General Division of the Tribunal more than one year after the decision was communicated to the Appellant. The Tribunal must apply subsection 52(2) of the DESD Act which clearly states that in

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<sup>1</sup> GD1-1-4

no case may an appeal be brought more than one year after the reconsideration decision was communicated to the Appellant.

[7] While I am dismissing this appeal on the basis that it was filed beyond one year. I also note two additional problems with this appeal.

[8] First, the legislation, as it existed at the time, required the Appellant to submit her application within 36 months of the final divorce decree or judgement of nullity. The Appellant did not do this. As a result, her only recourse was to submit a waiver signed by her former spouse. She has not done this. As a result, she cannot succeed on her application.

[9] Second, a Review Tribunal hearing was held concerning the denial of the benefit in December 1993. The Appellant then submitted an appeal to the Pension Appeal Board. This too was dismissed. As a result, any further appeal would be considered *res judicata* and again would have no possibility of success.

[10] Even if this matter were not late, I would have no choice but to dismiss this appeal for the reasons set out above.

## **CONCLUSION**

[11] The appeal to the General Division of the Tribunal was not brought in time and therefore will not proceed.

Adam Picotte  
Member, General Division – Income Security