



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CT v Minister of Employment and Social Development*, 2020 SST 842

Tribunal File Number: GP-20-950

BETWEEN:

C. T.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security

DECISION BY: Jackie Laidlaw

DATE OF DECISION: August 5, 2020

REASONS AND DECISION

INTRODUCTION

[1] The Respondent denied the Appellant's application for benefits at the initial level and on August 17, 2015 denied the application at the reconsideration level. The Appellant appealed that decision to the Social Security Tribunal (Tribunal) on June 19, 2020.

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 is under the impression her notice of appeal is only late due to not adhering to the 90-day time frame. She claimed she could not send the appeal earlier due to a series of incidents in her life that she was dealing with, such as a flooded basement in March 2019, and the COVID 19 pandemic starting in March 2020. She also notes her disability as interfering with her ability to apply on time.

[5] I accept that she initially sent the notice of appeal to the Minister rather than the Tribunal. The Minister received the appeal request on November 22, 2019 and returned the correspondence, along with a copy of the 2015 reconsideration decision, on January 22, 2020 for her to forward to the Tribunal. She did so on June 19, 2020.

[6] I accept that her intention to appeal was on November 22, 2019 when she sent it to the wrong department. I also accept that in 2019 and 2020 there were a number of

issues that took the Appellant's attention away from filing a notice of appeal. However, November 22, 2019 is still four years from the date she received the reconsideration request.

[7] The issue in this case is that the Appellant filed a notice of appeal well beyond one year from the date she received the reconsideration decision.

[8] She claims that when she initially received the reconsideration decision in August 2015, her son was in medical school and told her to try and get better rather than go on disability. She stated she did do everything in her power to get better, including considering bariatric surgery. Her husband finally told her, presumably last year, that she should apply for disability now as she is "too far gone".¹

[9] The Appellant accepts that she received the reconsideration decision in August 2015, as she noted in her notice of appeal² and her submissions³.

ANALYSIS

[10] The Tribunal finds that the Respondent's reconsideration decision was communicated to the Appellant on August 27, 2015, taking 10 days for mail delivery into consideration.

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

¹ GD 3 2 paragraph 15 of the letter of June 29, 2020

² GD 1 5: she indicated she received the reconsideration decision on both August 17, 2015 and again on January 22, 2020.

³ GD 5 4 a letter dated July 29, 2020 indicating she did receive the reconsideration decision letter in August 2015

CONCLUSION

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

[13] This decision does not prevent the Claimant from applying again for a disability benefit.

Jackie Laidlaw
Member, General Division – Income Security