



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *TV v Minister of Employment and Social Development*, 2021 SST 849

Tribunal File Number: GP-21-1985

BETWEEN:

T. V.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security

DECISION BY: Jackie Laidlaw

DATE OF DECISION: November 25, 2021

REASONS AND DECISION

INTRODUCTION

[1] The Respondent denied the Appellant's application for benefits at the initial level and on March 16, 2020 denied the application at the reconsideration level. The Appellant appealed that decision to the Social Security Tribunal (Tribunal) on September 22, 2021.

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's lawyer filed a notice of appeal on September 22, 2021.

[5] In the letter of September 15, 2021, they advise they are requesting an extension of time to appeal the reconsideration decision dated March 16, 2020.

[6] The Appellant's lawyer also advised they are requesting an extension of time to appeal the October 26, 2020 denial letter.

[7] The Appellant submits the October 26, 2020 is a "new initial denial" letter. The lawyer submits the Appellant sent a request for reconsideration on this letter to Service Canada dated December 3, 2020, who indicated in a letter of January 19, 2021 he should send it to the Tribunal. He was told again on the phone on July 15, 2021 and by letter dated July 16, 2021 from Service Canada that he should request a reconsideration directly from the Tribunal.

[8] The lawyer submitted all the letters as provided to her from the Appellant.

ANALYSIS

Request for an Extension of time to file an appeal from March 16, 2020 reconsideration decision

[9] I determine the Appellant received all the letters from Service Canada, as he provided them to his lawyer.

[10] This is a somewhat confusing file.

[11] There are two applications on file. The first dated October 18, 2018 and the second dated August 23, 2019.

[12] The application of October 18, 2018 was initially denied on May 17, 2019. The reconsideration decision was March 16, 2020. The reconsideration decision was appealed on September 22, 2021. This is the issue in appeal.

[13] The second application dated August 23, 2019 was initially denied on October 26, 2020. There is no reconsideration decision on the August 23, 2019 application.

[14] The 2018 application was denied initially on May 17, 2019. The Appellant had until August 25, 2019 to request a reconsideration. On August 23, 2019 he sent in the second application. Service Canada informed him in a phone call and letter dated November 1, 2019 that they would consider the second application as a request for a reconsideration of the first application if he requested this in writing by December 1, 2019. If he did not, then they would process the new application dated August 23, 2019.

[15] On November 14, 2019 Service Canada received a request for the reconsideration of the denial of the initial application. The Appellant was never denied a request for reconsideration as submitted by the Appellant's lawyer.

[16] The Minister denied the October 18, 2018 application upon reconsideration in a letter dated March 16, 2020.

[17] The reconsideration decision letter of March 16, 2020 had to refer to the first application, as the second application had not yet been denied initially.

[18] On December 8, 2020, the Appellant sent a letter of appeal to Service Canada. This letter, dated December 3, 2020, was not submitted by the lawyer. Nor is it in the file, as it was returned to the Appellant from Service Canada for him to properly file with the Tribunal. It was never received at the Tribunal.

[19] There are two letters from Service Canada, dated January 19, 2021 and July 15, 2021 indicating receipt of the December 2020 letter, and returning it for the Appellant to send to the Tribunal. Both letters clearly indicate the Appellant's December 3, 2020 letter is a request to appeal. It was not a letter requesting a reconsideration.

[20] I accept that the Appellant sent in a letter requesting an appeal incorrectly to Service Canada. The intention to appeal, at that time, was within 365 days of the reconsideration decision.

[21] The Appellant was informed in January 2021 that he had to send the notice of appeal to the Tribunal directly. He was over the 90-day time limit, but still within the 365 day cut off period. He did not resend the letter requesting an appeal to the Tribunal, once he was aware of the simple mistake in sending it to the wrong department.

[22] The notice of appeal from the March 16, 2020 reconsideration decision letter was filed on September 22, 2021, well beyond the 365 day cut off period.

[23] For the purpose of this decision, it is irrelevant which application the reconsideration decision applies to. What is relevant is if the Appellant appealed the reconsideration decision within 365 days of it being communicated to him. There is only one reconsideration decision letter on file. It is dated March 16, 2020. There is only one notice of appeal on file. It is dated September 22, 2021.

[24] 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.

Request for an extension of time to appeal the October 26, 2020 denial

[25] The second application, dated August 23, 2019 was used by the Minister as a request for a reconsideration of the first application.

[26] However, it appears the Minister may have made an error as the second application was processed before the first application was closed.

[27] Service Canada sent the Appellant letters on July 7, 2020 and August 10, 2020 requesting further information (the medical report) to complete the application of August 23, 2019. At that time, there still had not been an initial denial of the August 23, 2019 application, only requests for the medical information.

[28] The letter dated October 26, 2020 is clearly an initial denial of an application received August 23, 2019, incorrectly noted as August 23, 2020 in the letter. It provides the Appellant with the option to reconsider that decision. It also notes that the medical information still had not been received.

[29] The lawyer cannot request an extension of time to appeal the October 26, 2020 letter. The letter is not a reconsideration decision. It is an initial denial of the August 23, 2019 application.

[30] The lawyer may request the Minister grant an extension of time for a reconsideration of the denial dated October 26, 2020 of the August 23, 2019 application.

[31] I do not have jurisdiction to address this issue, as the Minister has not yet denied a request for a late reconsideration decision.

CONCLUSION

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

Jackie Laidlaw
Member, General Division – Income Security