



Citation: *GS v Minister of Employment and Social Development*, 2022 SST 884

**Social Security Tribunal of Canada
General Division – Income Security Section**

Interlocutory Decision

Appellant: G. S.
Representative: B. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated September 4, 2020 (issued
by Service Canada)

Tribunal member: Virginia Saunders

Decision date: August 15, 2022

File number: GP-22-5

Decision

[1] I find that this appeal was filed on time.

Overview

[2] The Appellant, G. S., applied for a Canada Pension Plan (CPP) disability pension in March 2019. The Minister of Employment and Social Development (Minister) refused her application, initially and on reconsideration.¹

[3] The Appellant appealed the Minister's decision to the Social Security Tribunal. The Tribunal received her Notice of Appeal on December 23, 2021.²

[4] Appellants are supposed to include a copy of the Minister's reconsideration decision with their appeal.³ However, they often don't. To avoid delay, the Tribunal usually accepts the appeal document and waits to get a copy of the reconsideration decision from the Minister.⁴

[5] The Appellant didn't include a copy of the reconsideration decision with her appeal. The Minister provided a copy on January 24, 2022. The copy was dated January 24, 2022.⁵ This didn't make sense, because the Appellant had already filed an appeal of the reconsideration decision.

[6] Tribunal staff decided the Appellant had probably been notified of the reconsideration decision before she received the actual decision letter. They asked the Appellant if she agreed that she was appealing the January 24, 2022, reconsideration decision. She agreed.

¹ If a person disagrees with the Minister's first (initial) decision about their application, they can ask the Minister to reconsider. The Minister has to issue a reconsideration decision. If the person disagrees with the reconsideration decision, they can appeal to the Tribunal. See sections 81 and 82 of the *Canada Pension Plan*.

² See GD1-6-12.

³ See section 24(1)(a) of the *Social Security Tribunal Regulations*.

⁴ The Minister has to give the Tribunal a copy of the reconsideration decision and any other relevant documents within 20 days of receiving a copy of the appeal. See section 26 of the *Social Security Tribunal Regulations*.

⁵ See GD2-4.

[7] On February 21, 2022, a Tribunal Member issued a decision saying the appeal was filed on time.

[8] In April 2022, the Minister filed a new copy of the reconsideration decision. This copy was dated September 4, 2020.⁶ The Minister explained that the January 24, 2022, date was the result of a computer error. The Minister asked the Tribunal to summarily dismiss the appeal, because it was brought more than one year after the reconsideration decision was communicated to the Appellant.⁷

What I have to decide

[9] First, I have to decide if I can revisit (reconsider) the earlier Tribunal decision, which said the appeal was filed on time.

[10] If I can revisit the earlier decision, I have to decide if the Appellant filed her appeal more than one year after the reconsideration decision was communicated to her.

Reasons for my decision

[11] I find that I can revisit the earlier Tribunal decision that the appeal was filed on time.

[12] However, I agree with the result of that decision. I find that the Appellant filed her appeal on time. I find that:

- The reconsideration decision was dated September 4, 2020.
- The reconsideration decision was communicated to the Appellant on September 9, 2020.
- The Appellant appealed to the Tribunal on December 2, 2020.

[13] Here are the reasons for my decision.

⁶ See GD2R-4.

⁷ See GD4.

I can revisit the earlier decision

[14] I agree with the Minister that section 66(1)(b) of the *Department of Employment and Social Development Act* (DESD Act) allows me to revisit the February 21, 2022, decision that decided the appeal was filed on time.

[15] That decision was based on the wrong date (January 24, 2022) for the Minister's reconsideration decision. The correct date (September 4, 2020) was a new material fact that could not have been discovered in February 2022 with the exercise of reasonable diligence.

[16] The reconsideration decision was part of a large document package the Minister was creating to send to the Tribunal on January 24, 2022. A computer error caused the reconsideration decision to be reproduced with the current date rather than its true date.⁸ In these circumstances, it isn't reasonable to expect there would be an employee double-checking each date. Therefore, the mistake could not have been discovered with the exercise of reasonable diligence.

The reconsideration decision was dated September 4, 2020

[17] I find that the reconsideration decision was dated September 4, 2020.

[18] First, there is no other explanation for that date appearing on the document.

[19] Second, the Minister's medical adjudicator reviewed the file and made the reconsideration decision on September 3, 2020.⁹ It makes sense that the decision letter was created the next day.

The reconsideration decision was communicated to the Appellant on September 9, 2020

[20] I find that the reconsideration decision was communicated to the Appellant on September 9, 2020.

⁸ The Minister explained this at GD5-2.

⁹ See GD2R-81-83.

[21] The Appellant sent a document to Service Canada that said she had received a decision letter on September 9, 2020.¹⁰ It makes sense that she would have been referring to the reconsideration decision.

The Appellant appealed to the Tribunal on December 2, 2020

[22] I find that the Appellant appealed to the Tribunal on December 2, 2020.

– The rules for filing an appeal at the Tribunal

[23] An appellant has to file their appeal within 90 days after the reconsideration decision was communicated to them. The Tribunal can extend that time limit, but only up to one year. The law says that in no case may an appeal be brought more than one year after the day the reconsideration decision was communicated to an appellant.¹¹

[24] The *Social Security Tribunal Regulations* (Regulations) include procedural rules about how and where to appeal.

- Section 7 says the date of filing an appeal is the date of the Tribunal's received stamp on the document, if the document is sent by mail or facsimile. If the document is filed by email or by the Tribunal's electronic filing procedure, the filing date is the date of receipt indicated by the Tribunal's time stamp.
- Section 23 of the Regulations says an appellant has to file their appeal at the address on the Tribunal's website.
- Section 24 says the appeal must be in the form set out on the Tribunal's website. The appeal has to contain certain information.

[25] The Appellant didn't follow these rules. She used the form Service Canada provides for reconsideration requests.¹² This form asks for much of the same information the Tribunal requires. If the Appellant had sent it to the Tribunal, it would have been accepted as an appeal. Unfortunately, the Appellant sent the form to Service

¹⁰ See GD2R-8.

¹¹ See section 52 of the *Department of Employment and Social Security Act*.

¹² See GD2R-8-11.

Canada, rather than to the Tribunal. The Minister conceded that Service Canada received this appeal document on December 2, 2020.¹³ However, Service Canada didn't tell the Appellant she had to file this document at the Tribunal until almost 10 months later.

– **Special circumstances**

[26] I can't disregard the time limits for filing an appeal, because they are in the DESD Act. But in special circumstances I can vary (change) the rules that are in the Regulations, or dispense the Appellant from complying with the Regulations. In other words, the Appellant would not have to follow or comply with them.¹⁴

[27] I find that there are special circumstances in this case.

[28] In deciding whether there are special circumstances, I must keep in mind the overriding consideration that the interests of justice must be served.¹⁵ I must also interpret the law in a broad and generous manner.¹⁶ Applying these principles, I find that there are special circumstances.

[29] The special circumstances are that it took Service Canada over nine months to return the Appellant's appeal document to her. It did not return the document until September 23, 2021¹⁷ The Appellant received it in October 2021.¹⁸ Until then, the Appellant believed she had done what she was supposed to do to appeal the reconsideration decision. She had no way of knowing she made a mistake in filing her appeal.¹⁹ Service Canada did know. Although the reconsideration decision of September 2020 explained that the Appellant had to file an appeal at the Tribunal, it should have been obvious to Service Canada that she didn't understand those

¹³ See GD4-1.

¹⁴ See section 3(1)(b) of the *Social Security Tribunal Regulations*.

¹⁵ See *Canada (Attorney General) v Larkman*, 2012 FCA 204. In that case, the Federal Court of Appeal was deciding whether to grant an extension of time to file the appeal. However, the Tribunal applied the same reasoning in a situation like the one in this appeal. See *MH v MESD and JD*, 2016 SSTGDIS 78. I do not have to follow that decision, but I agree with it.

¹⁶ See *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] SCR 27.

¹⁷ See GD4-1.

¹⁸ See GD1-8.

¹⁹ See GD3.

instructions. But it took no steps to inform the Appellant until it was too late for her to fix the problem.

[30] I am not saying Service Canada did this deliberately. But the Minister should not benefit from a time limit when it waited so long to contact the Appellant. If the Minister had called the Appellant or returned the appeal document to her in a timely manner, the Appellant would have been able to file her appeal at the Tribunal before the one-year time limit expired.

[31] In these special circumstances, it would be unfair to require the Appellant to comply strictly with the Regulations if it causes her to miss a time limit.

[32] Because of the special circumstances, I am relying on section 3(1)(b) of the Regulations to vary sections 7, 23, and 24 of the Regulations and determine that the appeal was filed on December 2, 2020. This is when Service Canada received the Appellant's appeal document.

[33] To the extent the Appellant's appeal document did not comply with sections 23 and 24 of the Regulations, I am dispensing the Appellant from having to follow those rules. I am changing the rules to allow the Appellant to have properly filed an appeal with the Tribunal when Service Canada received her document on December 2, 2020.

[34] This means the appeal was brought to the Tribunal on December 2, 2020.

The appeal was filed on time

[35] The reconsideration decision was communicated to the Appellant on September 9, 2020. This means she had 90 days – until December 8, 2020 – to appeal to the Tribunal.

[36] The Appellant appealed on December 2, 2020. As a result, her appeal was filed on time.

[37] This requires that I also vary the rules in sections 27 and 28 of the Regulations. These rules give the parties 365 days after an appeal is filed to file more documents

and submissions. After that, the Tribunal has to make a decision or schedule a hearing if one is required.

[38] In this case, the 365 days would have ended on December 1, 2021. But neither party has had 365 days to file more documents and submissions if they wish to.

[39] On the same day as the February 21, 2022, decision that the appeal was on time, the Tribunal sent the parties a letter describing what would happen next. That letter said the Tribunal would wait for documents until February 17, 2023.

[40] I see no reason to change that date. I am varying sections 27 and 28 of the Regulations so that the period for filing documents and submissions ends on February 17, 2023, not December 1, 2021.

Conclusion

[41] The appeal was filed on time.

Virginia Saunders
Member, General Division – Income Security Section