



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *WY v Minister of Employment and Social Development*, 2023 SST 197

Tribunal File Number: GP-23-138

BETWEEN:

W. Y.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security

DECISION BY: Adam Picotte

DATE OF DECISION: March 3, 2023

REASONS AND DECISION

INTRODUCTION

[1] The Minister denied the Appellant's application for benefits at the initial level and on July 30, 2020, denied the application at the reconsideration level. The Appellant appealed that decision to the Social Security Tribunal (Tribunal) on January 10, 2023.

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] In the notice of appeal, the Appellant wrote that he received the reconsideration decision on September 21, 2022.¹ However, this seemed unlikely to me as the reconsideration decision was issued on July 30, 2020², and the Appellant wrote to the Minister on June 7, 2022.³

[5] In writing to the Minister on June 7, 2022, the Appellant did not request a reconsideration of the initial decision but rather to have his Canada Pension Plan division of unadjusted pensionable earnings cancelled so that his full pension could be reinstated with increases and back payments made. He noted that his former spouse had been

¹ See GD1-6.

² See GD2-9

³ See GD2-35

missing since February 26, 2006, and was declared dead in 2014.⁴ No reference in his letter is made to reconsidering the initial decision on file.

[6] Because of these irregularities I wrote to the Appellant on February 28, 2023, to request when he received the reconsideration decision. I advised him that the Tribunal required this information to determine whether his appeal could proceed.

[7] On March 2, 2023, the Appellant wrote back to me that to the best of his knowledge he received the reconsideration letter on December 30, 2022.⁵

[8] In addition to the evidence on file, I have also considered the service standard for Canada Post. Canada Post sets out that its delivery time standard for regular mail within Canada is four days for national mail and less for provincial and local mail.⁶

[9] I also note that the reconsideration decision was sent to the mailing address where the Appellant currently resides.⁷ In other words, there has been no change of address that may have resulted in lost or misplaced mail.

[10] Further, the Appellant has not indicated that he did not receive the reconsideration decision when it was initially sent in 2020. Instead, he gave two different dates for when he received it. This makes both dates unreliable. But the Appellant did receive the reconsideration decision at some point.

ANALYSIS

[11] I find that the Respondent's reconsideration decision was communicated to the Appellant by August 30, 2020. This is a full month after the decision was issued by Service Canada. Given the Canada Post service standard, the lack of communication from the Appellant indicating that he had not received the reconsideration decision, his response to my inquiry, and the content of his letter to Service Canada in June 2022, I

⁴ GD2-35

⁵ See GD4-1.

⁶ <https://www.canadapost-postescanada.ca/cpc/en/support/kb/sending/general-information/how-long-does-it-take-for-a-parcel-or-letter-to-arrive>

⁷ See GD2-35 and GD2-8.

find that the Appellant received the reconsideration decision by August 30, 2020. In all the circumstances, this conclusion is more likely than the conclusion that the Appellant didn't receive the letter until sometime in 2022. It is also consistent with publicly available information about delivery service standards for mail in Canada.

[12] In making this decision, I am mindful of the Appeal Division's guidance that taking notice, either official or judicial, of the fact that a piece of mail arrived or did not arrive is improper. Instead, the Appeal Division says I should ask the Appellant when he received the reconsideration decision and consider the facts in his file to infer when he received it.⁸

[13] In this case, I have relied upon the Canada Post service standard and upon information contained in the Appellant's file to determine that he received the reconsideration decision by August 31, 2020.

[14] 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.

CONCLUSION

[15] 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

⁸ See *WM v Minister (Employment and Social Development)*, 2022 SST 29 at paragraphs 25 to 34.