



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. N. v Minister of Employment and Social Development*, 2018 SST 103

Tribunal File Number: AD-18-601

BETWEEN:

D. N.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: February 11, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] D. N. (Claimant) applied for Allowance for the Survivor benefits under the *Old Age Security Act*. He stated that he began to live with the deceased in September 2009 and continued to live with her until her death in December 2010. The Minister of Employment and Social Development (Minister) refused the application because there was insufficient information to establish that the Claimant and the deceased were in a common-law relationship. The Claimant requested that the Minister reconsider this decision. The Minister maintained its decision because the request for reconsideration was made beyond the time permitted.

[3] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal on the basis that the appeal was made after the time permitted. The appeal is dismissed for this reason also.

PRELIMINARY MATTERS

[4] I have decided this appeal the basis of the documents filed with the Tribunal after considering the following:

- a) The legal issue to be decided is straightforward;
- b) The parties have filed written submissions on the issues;
- c) The Appeal Division scheduled a pre-hearing teleconference. The Claimant declined to participate because of his health and lack of reliable telephone. He stated that he did not wish to engage in oral arguments because of his health.¹
- d) The *Social Security Tribunal Regulations* require that proceedings be concluded as quickly as the circumstances and considerations of fairness and natural justice permit.²

¹ AD4-2.

ISSUE

[5] Did the General Division base its decision on an erroneous finding of fact made without regard for when the Claimant received the reconsideration decision?

ANALYSIS

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that the Appeal Division can consider. They are that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.³ Therefore, to succeed on appeal, the Claimant must prove that the General Division made one of these errors.

[7] The DESD Act also states that an appeal to the Tribunal must be made within 90 days of the reconsideration decision being communicated to a claimant. The Tribunal can extend this time, but in no case may an appeal be brought more than one year after the reconsideration decision has been communicated to a claimant.⁴

[8] The reconsideration decision is dated September 21, 2016. The Claimant made the appeal to the Tribunal on May 17, 2018. He argues that the General Division based its decision on an erroneous finding of fact because it failed to consider that he did not receive the Minister's reconsideration decision until March 22, 2018, and so the appeal was made in time. However, the written record contains a copy of the Minister's reconsideration letter that the Claimant returned to the Minister along with other documents on September 28, 2016. The Claimant did not dispute this. Therefore, I am satisfied that the Claimant received the reconsideration decision before September 28, 2016, and that the appeal was made more than one year after the reconsideration decision was communicated to him.

² *Social Security Tribunal Regulations*, s 3(1).

³ DESD Act, s 58(1).

⁴ *Ibid.*, s 52(2).

[9] The General Division did not base its decision on an erroneous finding of fact regarding when the reconsideration decision was communicated to the Claimant.

[10] I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. It made no error in law. It observed the principles of natural justice.

CONCLUSION

[11] The appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
SUBMISSIONS:	D. N., Appellant Nathalie Pruneau, Representative for the Respondent