



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *VV v Minister of Employment and Social Development*, 2022 SST 1225

Tribunal File Number: GP-22-1602

BETWEEN:

V. V.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security

DECISION BY: Anne S. Clark

DATE OF DECISION: December 1, 2022

REASONS AND DECISION

DECISION

[1] The Appellant, V. V., may not have an extension of time to appeal. This means his appeal will not proceed at the Social Security Tribunal (Tribunal).

OVERVIEW

[2] The Appellant applied for a pension under the *Old Age Security Act* (OAS Act) in August 2014. The Minister of Employment and Social Development (Minister) allowed his application and awarded him a pension of 32/40 of the full amount.¹ The Appellant asked the Minister to reconsider the amount of the pension. He wanted the Minister to award a full pension.²

[3] On November 27, 2017, the Minister refused the Appellant's request for reconsideration.³ The Appellant appealed to the Tribunal on September 26, 2022.⁴ This date is important because the Tribunal isn't allowed to accept appeals filed more than a year after the Minister communicated its decision.⁵

[4] I must decide if the appeal can proceed.

THE LAW

[5] I have the authority to allow additional time for an appellant to file an appeal.⁶ However, the law limits my authority. The law says that in no case may a person appeal a decision more than one year after the Minister told them about it in writing.⁷

¹ The Minister's decision to allow the application begins at GD2-40.

² The Appellant's letter is at GD2-44.

³ The decision is at GD2-45.

⁴ The Appellant's letter of appeal is in GD1. The date on his letter is September 15, 2022. The Tribunal received it on September 26, 2022.

⁵ Section 52(2) of the *Department of Employment and Social Development Act*

⁶ Section 52(1)(b) of the *Department of Employment and Social Development Act*

⁷ Section 52(2) of the *Department of Employment and Social Development Act*

APPELLANT'S SUBMISSIONS

[6] A partial OAS pension is payable to a person who has resided in Canada for at least 10 years.⁸ A person who has resided in Canada for 40 years gets a full pension.

[7] In its 2017 reconsideration decision, the Minister confirmed that the Appellant's years of residence made him eligible for a 32/40 pension.

[8] The Appellant wrote that he had to wait to appeal the 2017 reconsideration decision because he did not have 40 years of residence in 2017. He wrote that the rule that requires a person to file an appeal within 90 days is unreasonable. In his case, it would be impossible for him to appeal within the 90 days because he did not meet the residence requirements for a full pension until after the appeal period.

[9] The Appellant sent a copy of the reconsideration decision with his letter of appeal.⁹ He did not say when he received it. He did not raise any issues in his appeal about when the Minister told him about the decision.

REASONS FOR MY DECISION

[10] I find the Minister told the Appellant about the reconsideration in writing by December 7, 2017. That was 10 days after the Minister mailed the decision. I find that would be a reasonable time for the decision to reach the Appellant by regular mail. The Appellant did not say when he received it. The Minister sent the letter to the address the Appellant still uses. There is no other evidence about the time it took to reach him. Considering the available evidence I find the Appellant likely received the decision by December 7, 2017. That means the Appellant filed his appeal to the Tribunal almost five years after he received the reconsideration decision.

[11] I am required to follow the rules set out in the legislation. The rule makes it clear there is no case when a person may appeal to the Tribunal more than one year after receiving the reconsideration decision. The law does not allow exceptions to the rule. The

⁸ See paragraph 3(2)(b) of the *Old Age Security Act*

⁹ See GD1.

Appellant filed his appeal to the Tribunal more than one year after the Minister told him, in writing, of the decision. He is not allowed to appeal that decision to the Tribunal.

CONCLUSION

[12] The Appellant did not file his appeal to the General Division of the Tribunal in the time allowed and it cannot not proceed.

Anne S. Clark
Member, General Division – Income Security