



[TRANSLATION]

Citation: *SW v Minister of Employment and Social Development*, 2023 SST 1688

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant: S. W.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated August 26, 2021
(issued by Service Canada)

Tribunal member: François Guérin

Decision date: October 20, 2023

File number: GP-23-1655

Decision

[1] The appeal won't proceed. I will now explain why.

Overview

[2] The Appellant applied for an Old Age Security (OAS) pension on February 1, 2019.¹ The Minister of Employment and Social Development (Minister) refused his application.² The Appellant asked the Commission to reconsider its decision. On August 26, 2021, after reconsideration, the Minister denied the application again.³

[3] On September 27, 2023, the Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).⁴

What I have to decide

[4] I have to decide whether the Appellant brought his appeal in time.

Reasons for my decision

[5] The appeal won't go ahead because the Appellant didn't bring it to the Tribunal in time. Here are the reasons for my decision.

What the law says

[6] If a person disagrees with the Minister's reconsideration decision, they have to file an appeal with the Tribunal within 90 days after the Minister told them about the decision.⁵

¹ GD2-3 to GD2-11.

² GD2-222 to GD2-224.

³ GD2-268 and GD2-269.

⁴ GD1A.

⁵ See section 52(1) of the *Department of Employment and Social Development Act* (DESD Act).

[7] If a claimant doesn't meet this deadline, the Tribunal may give them more time (in other words, accept the appeal even though it was late). But the time limit to appeal a reconsideration decision may be extended by up to one year.⁶

The appeal was past the one-year deadline

[8] I find that the Appellant appealed after the one-year deadline.

– The Minister communicated its decision on September 7, 2021

[9] The Minister communicated its reconsideration decision to the Appellant on August 26, 2021.⁷

[10] Canada Post delivers mail within 10 days to Canada. It is reasonable to believe that this is what happened in this case. Ten days later falls on Sunday, September 5, 2021, and the first Monday in September is a statutory holiday in Canada. The Appellant should have received this letter on Tuesday, September 7, 2021.

– The appeal had to be filed by September 7, 2022

[11] The Appellant had until September 7, 2022 (one year after the date of the communication) to appeal to the Tribunal.

[12] He filed his appeal on September 27, 2023.

[13] The Tribunal doesn't have equitable jurisdiction. In other words, I can't allow the appeal just because I think it would be fair to do so, or because I want to help the Appellant out of a difficult situation. I have to follow the law.

Conclusion

[14] The Appellant filed his appeal more than a year after the Minister communicated its decision to him.

⁶ See section 52(2) of the DESD Act.

⁷ GD2-268 and GD2-269.

[15] This means that the appeal won't proceed.

François Guérin

Member, General Division – Income Security Section