



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. I. v Minister of Employment and Social Development*, 2019 SST 104

Tribunal File Number: GP-18-2069

BETWEEN:

W. I.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Raymond Raphael

DATE OF DECISION: January 8, 2019

DECISION

[1] The time for the Claimant to appeal to the Social Security Tribunal (Tribunal) is not extended.

OVERVIEW

[2] In June 2008 the Claimant's former spouse applied for a division of unadjusted pension earnings (DUPE) for the time that she and the Claimant cohabited. The Minister notified the Claimant that the DUPE had been allowed on May 12, 2009. The Minister did not receive the Claimant's request for reconsideration until June 28, 2017, which was close to eight years beyond the 90-day limit to apply for reconsideration.

[3] On June 1, 2018 the Minister refused to accept the Claimant's late request for reconsideration. The Claimant appealed that decision to the Tribunal on September 10, 2018, which was one-day beyond the 90-day limit to appeal.

ISSUE

[4] I must decide whether to allow an extension of time for the Claimant to appeal.

ANALYSIS

[5] The appeal was filed after the 90-day limit. The Minister's decision refusing to accept the late request for reconsideration was dated June 1, 2018. Mail in Canada is usually received within 10 days. Accordingly, I find that the reconsideration decision was communicated to the Claimant by June 11, 2018.

[6] The Claimant had until September 9, 2018 to file an appeal.¹ The Claimant filed his appeal on September 10, 2018 which was one day beyond the 90-day limit.

[7] I can, however, extend the time to appeal.² In deciding whether to extend the time to appeal, I must consider and weigh the following four factors:

¹ Paragraph 52(1)(b) of the *Department of Employment and Social Development Act* (DESD Act)

² Paragraph 52(2) of the DESD Act

- a) Has the Claimant demonstrated a continuing intention to pursue the appeal?
- b) Does the Claimant have an arguable case?
- c) Is there a reasonable explanation for the Claimant's delay in filing the appeal?, and
- d) Is there prejudice to another party if I allow the extension?³

[8] The overriding consideration is that the interests of justice be served.⁴

[9] Since the appeal was only one day late I am satisfied that the Claimant had a continuing intention to appeal to the Tribunal and that he has a reasonable explanation for the delay. I am also satisfied that there is no prejudice to any party by reason of his appeal being one-day late.

[10] The overriding consideration, however, is that the Claimant does not have an arguable case. It does not serve the interests of justice to extend the time for appealing the Minister's refusal to accept the Claimant's late reconsideration request when the appeal is bound to fail.

Why the Claimant does not have an arguable case

[11] On the appeal the Claimant would have to first establish that the Minister failed to exercise its discretion judicially when it refused to extend the time for the Claimant to request reconsideration. If he establishes this, he would also have to establish that the time for him to request reconsideration should be extended.

[12] Even though the Claimant was notified that the DUPE had been allowed in May 2009 he did not request the reconsideration until June 2017, which is close to eight years after the time limit for requesting reconsideration.

[13] The Minister could allow a longer period to request the reconsideration if satisfied that 1) there is a reasonable explanation for requesting a longer period, 2) the Claimant has demonstrated a continuing intention to request reconsideration, 3) the request for reconsideration

³ *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883

⁴ *Canada (Attorney General) v. Larkman*, 2012 FCA 204

has a reasonable chance of success, and 4) no prejudice would be caused to the Minister or a party by allowing a longer period for making the request.

[14] The Minister refused to allow a longer period to request reconsideration because the request for reconsideration had no reasonable chance of success. It was not necessary for the Minister to consider the other factors since all four factors must be met.⁵

[15] The Claimant says that he disagrees with the DUPE because the December 5, 2008 divorce order provides that any and all additional claims that his former wife may have had for a division of family or other assets was dismissed.⁶

[16] The CPP provides that a DUPE is mandatory following the judgment granting divorce.⁷ There is an exception if there is an agreement or court order in a province that expressly permits the exception. However, the order or agreement must mention the CPP and the parties' intention that no division of CPP credits made.⁸

[17] The divorce order was made in British Columbia which permits the exception, but it does not mention the CPP or an intention that there should be no division of CPP credits. Accordingly, it does not provide an exception to the DUPE being mandatory.

[18] On the face of the record and the applicable law, the Claimant does not have an arguable case that the Minister failed to exercise its discretion judicially. The Claimant's request for reconsideration had no reasonable chance of success because the DUPE is mandatory.

CONCLUSION

[19] I refuse an extension of time to appeal because the Claimant does not have an arguable case on the appeal.

Raymond Raphael
Member, General Division - Income Security

⁵ *Lazure v Attorney General of Canada* 2018 FC 467, paragraph 25

⁶ GD1-6 to 8

⁷ Paragraph 55.1(1)(a) of the CPP

⁸ Paragraphs 55.2((2) and (3) of the CPP