



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. B. v Minister of Employment and Social Development*, 2019 SST 836

Tribunal File Number: AD-19-488

BETWEEN:

T. B.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Kate Sellar

Date of Decision: September 4, 2019

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] T. B. (Claimant) applied for a death benefit under the *Canada Pension Plan* (CPP) after her brother, R. B., died. The Minister denied the application initially and on reconsideration. The Minister's reconsideration decision is dated December 4, 2017. The Minister took the position that R. B. did not make sufficient contributions to the Canada Pension Plan for the Claimant to qualify.

[3] The Tribunal received a notice of appeal from the Claimant on December 18, 2018. The Claimant took the position that she sent a notice of appeal by registered mail in early February 2018. She thinks that the Notice of Appeal was either lost or misfiled. The General Division decided that the Claimant did not appeal in time. The General Division member explained that she could not consider giving the Claimant an extension of time because the appeal was over a year late.

[4] I must decide whether there is an arguable case that the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) that would justify granting leave to appeal.

[5] There is no arguable case that the General Division made an error. The application for leave to appeal is refused.

ISSUE

[6] Is there an arguable case that the General Division made an error of fact in its decision when it refused to grant an extension of time in the Claimant's case?

ANALYSIS

[7] The DESDA sets out the grounds of appeal. The Appeal Division can review a General Division member's decision when that decision contains an error of fact.¹ The Appeal Division refuses leave to appeal if it is satisfied that the appeal has no reasonable chance of success.² An arguable case at law is a case with a reasonable chance of success.³

Is there an arguable case that the General Division made an error of fact in its decision when it refused to grant an extension of time in the Claimant's case?

[8] There is no arguable case that the General Division made an error of fact.

[9] The DESDA states that 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 Minister's reconsideration decision was communicated to the Claimant.⁴

[10] The Claimant argues that the General Division made an error of fact. She points out that she was asked for additional proof that her brother had additional work history not included in Service Canada's file. The Claimant says that she provided that information to Service Canada in February 2018.

[11] The General Division received a Notice of Appeal from the Claimant on December 18, 2018. The General Division cannot provide an extension of time in this case because the law does not allow it. A Claimant cannot bring an appeal to the General Division more than one year after the day on which the Minister's reconsideration decision was communicated to the Claimant. The General Division member found that the decision was communicated to the Claimant by December 14, 2017. That means the December 18, 2018 application was over one year late.

¹ DESDA, s 52(1)(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

² DESDA, s 58(2).

³ The Federal Court of Appeal confirmed that idea in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁴ DESDA, s 52(2).

[12] There is no arguable case for an error of fact here. There is no arguable case that the General Division ignored or misunderstood the Claimant's evidence about preparing and sending documents in February 2018. The General Division must apply the law to the available evidence. The General Division considered the Claimant's evidence, but did not conclude that the Claimant appealed to the General Division before December 18, 2018. The Claimant has no reasonable chance of success on appeal.

CONCLUSION

[13] The application for leave to appeal is refused.

Kate Sellar
Member, Appeal Division

REPRESENTATIVE:	T. B., self-represented
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