



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AR v Minister of Employment and Social Development*, 2020 SST 879

Tribunal File Number: AD-20-749

BETWEEN:

A. R.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: October 8, 2020

DECISION AND REASONS

DECISION

[1] The appeal is late. An extension of time to file the application is refused.

OVERVIEW

[2] A. R. (Claimant) applied for a death benefit and survivor benefits after the tragic death of her husband. The Minister of Employment and Social Development refused the applications. It decided that the Claimant was not eligible for these benefits because the Claimant's husband had not made sufficient contributions to the Canada Pension Plan.

[3] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division summarily dismissed the appeal. It decided that the appeal had no reasonable chance of success for the same reason.

[4] The Claimant's appeal is late. Time to file the application is not extended.

PRELIMINARY MATTER

[5] This appeal was decided on the basis of the documents filed with the Tribunal for the following reasons:

- a) The legal issue to be decided is straightforward;
- b) The parties had the opportunity to make written submissions, and did so;
- c) There are no gaps in the submissions;
- d) The *Social Security Tribunal Regulations* requires that appeals be concluded as quickly as the considerations of fairness and natural justice permit.¹

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

ISSUES

[6] Is the application to the Appeal Division late?

[7] If so, should an extension of time to file the application be granted?

ANALYSIS

The appeal is late

[8] An appeal to the Tribunal's Appeal Division must be made within 90 days of when the General Division decision was communicated to the Claimant.² The General Division decision is dated October 22, 2019. The Claimant wrote that she received it on this day.³ The Application to the Appeal Division was filed with the Tribunal on August 18, 2020. This is more than 90 days after the decision was communicated to the Claimant. The appeal is late.

An extension of time to file the application is refused

[9] The Appeal Division can extend time for an application to be filed with the Tribunal.⁴ In assessing the request to extend time for leave to appeal, the following factors must be considered and weighed:

- a) Is there a continuing intention to pursue the application;
- b) Is there is a reasonable explanation for the delay;
- c) Is there is any prejudice to the other party in allowing the extension; and
- d) Does the appeal have a reasonable chance of success?⁵

² *Department of Employment and Social Development Act* s. 57(1)(b)

³ AD1-2

⁴ *Department of Employment and Social Development Act* s. 57(2)

⁵ *Canada (Minister of Human Resources Development) v. Gatellaro*, 2005 FC 883

The weight to be given to each of these factors may differ in each case, and in some cases, different factors will be relevant. The overriding consideration is that the interests of justice be served.⁶

[10] The Claimant wrote that the application was late because she was in Pakistan and could not return to Canada because of the Covid-19 pandemic, and she was not aware of her ability to appeal to the Tribunal's Appeal Division until she returned to Canada.

[11] However, the General Division decision is dated October 22, 2019. It was sent to the Claimant by email and the Claimant acknowledged that she received it on the same date. With the decision was a letter that says that the Claimant could appeal the General Division decision to the Tribunal's Appeal Division. She was not precluded from doing so by the pandemic in the 90 days after the decision was communicated to her. Pandemic restrictions did not begin until after this time had expired.

[12] The Claimant has not provided any information on which I can conclude that she had a continuing intention to appeal. In fact, if she was unaware of her appeal right until she returned to Canada, she could not have had a continuing intention to do so.

[13] I have no information regarding any prejudice to the Minister. I can make no finding in this regard.

[14] The appeal does not have a reasonable chance of success. An appeal to the Tribunal's Appeal Division is not a re-hearing of the original claim. Instead, the Appeal Division can only decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or

⁶ *Canada (Attorney General) v. Larkman*, 2012 FCA 204

d) based its decision on an important factual error.⁷

[15] The Claimant has not pointed to the General Division having made any such errors. I have read the General Division decision and the written record. Nothing suggests that the General Division failed to provide the parties with a fair process. The General Division gave the Claimant notice of its intention to summarily dismiss her appeal and an opportunity to respond. She did so.⁸ The General Division considered this in making its decision.

[16] The General Division made no error in law. The decision correctly states that the General Division must summarily dismiss an appeal that does not have a reasonable chance of success.⁹ It carefully considered the contribution requirements in the *Canada Pension Plan* for the death and survivor benefits and the decision explains why they were not met.¹⁰ The General Division applied the facts to the law to make its decision.

[17] The General Division did not base its decision on any important factual error. None of the relevant facts are in dispute. The General Division did not overlook or misconstrue any important information.

[18] I place the most weight on the appeal's lack of any reasonable chance of success. It is not in the interests of justice to extend time for an appeal that is bound to fail on its merits. In addition, the Claimant did not have a continuing intention to appeal, nor a reasonable explanation for failing to do so within the time permitted.

CONCLUSION

[19] The appeal is late. An extension of time is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

⁷ This paraphrases the grounds of appeal set out in s. 58(1) of the *Department of Employment and Social Development Act*

⁸ General Division decision at para. 6

⁹ General Division decision at para. 3

¹⁰ General Division decision at para. 7 to 10

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	A. R., Appellant Ian McRobbie, Counsel for the Respondent