Citation: *JL v Minister of Employment and Social Development*, 2022 SST 19

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. L.
Respondent:	Minister of Employment and Social Development

Decision under appeal:	General Division decision dated November 30, 2021 (GP-21-2184)

Tribunal member:	Kate Sellar
Decision date:	January 14, 2022
File number:	AD-21-460

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not go ahead. These reasons explain why.

Overview

[2] J. L. (Claimant) applied for a Canada Pension Plan (CPP) retirement pension in January 2017. The Minister of Employment and Social Development Canada (Minister) denied the application initially and on reconsideration. The reconsideration letter is dated March 27, 2019. The letter explains that the Claimant was not yet old enough to apply for a retirement pension.[1]

[3] The Claimant appealed to this Tribunal on October 19, 2021.[2] The General Division decided that it could not proceed with the appeal because the Claimant filed it more than one year after the day the Minister communicated the reconsideration decision to the Claimant.

[4] The Claimant asks for leave to appeal the General Division's decision.

[5] I must decide whether it is arguable that the General Division made an error that would justify granting the Claimant leave to appeal.

[6] The Claimant has not raised an arguable case for an error by the General Division.

[7] I am refusing leave to appeal. The appeal will not go ahead.

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[1] The letter explains that the CPP should receive an application for a retirement pension no earlier than 11 months before the claimant's 60th birthday. The Claimant was born on December 4, 1969 and applied in January 2018. In the Claimant's appeal documents, he shows calculations about eligibility for a retirement pension that follow a formula for adding 50 years of age to qualify for the pension to 35 years of contributions to arrive at the number 85. Sometimes in private pension plans, people call formulas like that the "85 factor." This is not how the Minister calculated retirement pension eligibility under section 44 of the CPP.
[2] See GD1.

Issue

[8] The issue in this appeal is as follows:

- Can it be argued that the General Division made an error by finding that the appeal could not go ahead since the Claimant filed his appeal more than one year after the Minister communicated the reconsideration decision to him?

Analysis

[9] First, I will describe my role at the Appeal Division in terms of reviewing General Division decisions. Second, I will explain how I have reached the conclusion that the Claimant has not raised an arguable case that the General Division made an error.

Reviewing General Division decisions

[10] The Appeal Division does not provide an opportunity for the parties to re-argue their case in full. Instead, I reviewed the Claimant's arguments and the General Division's decision to decide whether the General Division may have made any errors.

[11] That review is based on the wording of the *Department of Employment and Social Development Act* (Act), which sets out the "grounds of appeal." The grounds of appeal are the reasons for the appeal. To grant leave to appeal, I must find that it is arguable that the General Division made at least one of the following errors:

- It acted unfairly.
- It failed to decide an issue that it should have, or decided an issue that it should not have.
- It based its decision on an important error regarding the facts in the file.
- It misinterpreted or misapplied the law.[3]

[3] See section 58(1) of the Act.

[12] At the leave to appeal stage, a claimant must show that the appeal has a reasonable chance of success.[4] To do this, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.[5]

The Claimant did not raise an arguable case for an error

[13] The Claimant did not raise an arguable case for an error by the General Division. The Claimant has not provided an argument on which I can justify granting leave to appeal.

[14] Claimants must bring their appeals to the General Division within 90 days after the Minister communicated the decision. The General Division can grant an extension of time to appeal, but not beyond "one year after the day on which the decision is communicated" to the claimant.[6]

[15] When claimants appeal to the General Division, the appeal form asks them to attach the reconsideration decision they received from the Minister that they disagree with. That form also asks claimants to:

- give the date they received the reconsideration decision; or
- check the box to state that they don't remember when the received it.

[16] The Claimant filed the appeal on October 19, 2021. When the Claimant appealed, he stated that he was attaching the reconsideration decision. But the letter he attached was from the Tribunal. In the letter, the Tribunal confirmed they received some documents from him, but they would not process those documents (as there was no active appeal under his name).[7] That letter was dated March 24, 2021.[8]

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[4] See section 58(2) of the Act.
[5] The Federal Court of Appeal explained this idea in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[6] See section 52 of the Act.
[7] See GD1-3.
[8] See GD1-8.

[17] The Tribunal wrote to the Claimant on October 26, 2012, confirming that they received his appeal but that it appeared to be late. The letter explained that the Tribunal cannot allow a late filing if more than one year has passed form the date he received his reconsideration decision.[9] The letter does not ask the Claimant to confirm when he received the reconsideration decision, but it does ask him to provide more information about why and how he was late. The previous document the Tribunal shared with the Claimant contained a copy of the reconsideration decision.[10]

[18] The Claimant did not provide any further response to the Tribunal's questions about lateness in that letter.

[19] General Division decided that the Claimant was clearly trying to appeal the retirement pension decision that the Minister made on reconsideration in March 2019.[11]

[20] The General Division did not have evidence from the Claimant about when he received the reconsideration decision from the Minister. The General Division reasoned, based on the evidence it did have, that it was unlikely that the Claimant:

- received the reconsideration decision two years after it was issued; or
- that he would wait two years for a reconsideration decision without having some contact with the Minister.[12]

[21] Accordingly, the General Division concluded that it was more likely than not the Claimant brought the appeal to the General Division more than one year after the Minister communicated the reconsideration decision. Therefore, the General Division did not have the authority to offer the Claimant an extension, and the appeal would not proceed.

[22] In my view, there is no arguable case that the General Division made an error.

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[9] See GD3.
[10] GD2-23.
[11] See General Division decision paragraph 10.
[12] See paragraph 11 of the General Division decision.

[23] There is no arguable case that the General Division failed to apply properly the one-year limitation in the Act. There was no power (discretion) to provide an extension longer than the one year.

[24] The Claimant has not provided any argument about how the General Division made an error by dismissing his appeal. He filed the appeal more than 2 years (some 30 months and three weeks) after the date on the reconsideration decision. He did not provide any information to explain when he received that reconsideration decision or to explain the delay generally.

[25] The Claimant seems to argue that he is in time because he sent some documents to the Tribunal in March 2021 and the Tribunal returned those documents to him that same month. But March 2021 is still more than one year after the date of the reconsideration decision in March 2019. Even if those documents had been the Claimant's request to appeal, they would have been outside the one-year limit (if the Claimant received the reconsideration letter shortly after the Minister wrote it).

[26] The General Division decided on a balance of probabilities that the Claimant's application was more than one year late. The General Division weighed the available evidence on the question of when the Claimant received the reconsideration decision. Since the Claimant did not raise any argument or issue about when he received the reconsideration letter, the General Division inferred that the Claimant did not receive the reconsideration letter so long after its date. If the Claimant had received the reconsideration letter just over 18 months late for some reason, his appeal might have been on time.

[27] At the Appeal Division, the Claimant has not disputed the General Division's finding (based on inference) about when he received the reconsideration letter.

[28] While it can be an error of law to make a finding of fact with no evidence, I am satisfied that is not the case here.[13] The Claimant was silent on the question of when he

[13] See *R v J.M.H.*, 2011 SCC 45 at paragraph 45; and *Murphy v Canada (Attorney General)*, 2016 FC 1208, at paragraph 36.

received the reconsideration decision. The General Division had a copy of the reconsideration letter, the date on that letter, and information to suggest that the letter would have had to arrive to the Claimant many months after its date to render the Claimant's appeal eligible for an extension. This did not appear a likely scenario to the General Division. I do not see an argument that those findings of fact are either perverse or capricious in some way. I do not see anything to suggest that the General Division ignored evidence about the timing of the appeal.

[29] I have reviewed the documents in the Claimant's appeal. I am satisfied that the General Division did not ignore or misunderstand any of the evidence.[14] The Claimant is not arguing that he lacked a fair opportunity to provide information about the late appeal. The General Division applied the available facts about the Claimant's appeal to the law that imposes a one-year limit on extension of time to appeal. There is no arguable case for an error.

Conclusion

[30] I am refusing permission to appeal. This means that the appeal will not go ahead.

Kate Sellar
Member, Appeal Division

[14] This kind of review is consistent with the expectation the Federal Court set out in *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.