Citation: *MR v Minister of Employment and Social Development*, 2022 SST 656

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	M. R.
Representative:	Julian C. Renaud
Respondent:	Minister of Employment and Social Development

Decision under appeal:	General Division decision dated April 19, 2022 (GP-22-206)

Tribunal member:	Neil Nawaz
Decision date:	July 19, 2022
File number:	AD-22-296

Decision

[1] Leave to appeal is refused. I see no basis for this appeal to go forward.

Overview

[2] The Applicant applied for a division of credits between herself and J. M., a contributor to the *Canada Pension Plan.* The Minister refused the application initially and again on reconsideration because the Applicant had not provided any proof that she and J. M. had lived together for at least 12 consecutive months. The Claimant appealed this refusal to the Social Security Tribunal's General Division.

[3] The General Division dismissed the appeal because the Applicant submitted it more than one year after she had received the Minister's reconsideration letter. The Applicant then applied to the Tribunal's Appeal Division for permission to appeal. In her application, she did not specify any grounds of appeal but included a certificate indicating that she and J. M. were married on March 8, 2008.

[4] The Tribunal then sent a letter asking the Applicant to elaborate on her reasons for appealing. She responded with an email that essentially repeated the statutory grounds of appeal listed on the application form to request permission to appeal. However, she did not specify her objections to the General Division's decision.

Issue

[5] There are four grounds of appeal to the Appeal Division. An applicant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.[1]

[1] See *Department of Employment and Social Development Act* (DESDA), section 58(1).

[6] An appeal can proceed only if the Appeal Division first grants permission to appeal.[2] At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.[3] This is a fairly easy test to meet, and it means that claimants must present at least one arguable case.[4]

[7] In this appeal, I had to decide whether the Applicant raised an arguable case.

Analysis

[8] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Applicant does not have an arguable case.

[9] Under the law, an appeal to the General Division must be submitted to the Tribunal within 90 days after the day on which the Minister's reconsideration decision was communicated to the claimant.[5] The General Division may allow further time to make the appeal, but in no case can it be made more than one year after the day on which the decision was communicated to the claimant.[6]

[10] In this case, the General Division found that the notice of appeal was submitted to the Tribunal more than a year after the Applicant received the Minister's reconsideration letter. I don't see an arguable case that the General Division committed an error when it made this finding.

[11] In her correspondence, the Applicant has never denied that she submitted her notice of appeal more than a year after the Minister issued its reconsideration letter. The record shows that the Minister's reconsideration letter was dated April 24, 2013[7] and

---

[2] See DESDA, sections 56(1) and 58(3).
[3] See DESDA, section 58(2).
[4] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[5] See DESDA, section 52(1)(b).
[6] See DESDA, section 52(2).
[7] See Minister's reconsideration letter, GD2-23.

that the Applicant's notice of appeal was not filed until January 17, 2022—nearly nine years later.[8]

[12] The Applicant seems to be suggesting that the General Division overlooked evidence that she was married to J. M. However, such evidence was already on file, and the General Division is presumed to have considered all the material available to it.[9] More to the point, it didn't matter whether the Applicant had been married to J. M. or how long she had lived with him. That is because the only issue for the General Division was whether the Applicant's appeal was late and, if so, by how much.

[13] For appeals submitted more than one year after reconsideration, the law is strict and unambiguous. The governing legislation states that **in no case** may an appeal be brought more than one year after the reconsideration decision was communicated to a claimant. While extenuating circumstances may be considered for appeals that come after 90 days but within a year, the wording of the legislation eliminates any scope for a decision-maker to exercise discretion once the year has elapsed. The Applicant's explanations for filing her appeal late are therefore rendered irrelevant, as are other factors, such as the merits of her claim for a division of pensionable credits.

[14] It is unfortunate that missing a filing deadline may have cost the Applicant an opportunity to make an appeal, but the General Division was bound to follow the letter of the law, and so am I. The Applicant may regard this outcome as unfair, but I can only exercise the powers granted to me by the Appeal Division's enabling legislation.[10]

---

[8] See Applicant's notice of appeal to the General Division dated January 17, 2022, GD1.
[9] See *Simpson v Canada (Attorney General)*, 2012 FCA 82.
[10] See *Pincombe v Canada (Attorney General)*, [1995] F.C.J. No. 1320 and *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.

Conclusion

[15] The Applicant has not identified any grounds of appeal that have a reasonable chance of success.

[16] Permission to appeal is refused.

Member, Appeal Division