



Citation: *DC v Minister of Employment and Social Development*, 2023 SST 211

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

**Applicant
(Claimant):** D. C.

Respondent: Minister of Employment and Social Development

**Decision
under
appeal:** General Division decision dated November 25, 2022
(GP-22-1316)

**Tribunal
member:** Kate Sellar

**Decision
date:** February 27, 2023

File number: AD-23-90

Decision

[1] I'm refusing leave (permission) to appeal. The appeal will not go ahead to the next step. These reasons explain why.

Overview

[2] D. C. (Claimant) applied for a *Canada Pension Plan* (CPP) disability pension. The Minister of Employment and Social Development (Minister) refused her application initially and on reconsideration. The reconsideration letter is dated April 26, 2021.

[3] The Claimant appealed to the General Division of this Tribunal on July 25, 2022. The General Division refused to give the Claimant an extension of time because she filed her appeal more than one year after the Minister communicated its reconsideration decision to her.

[4] The Claimant asked for permission to appeal to the Appeal Division. I must decide whether the Claimant has an arguable case that the General Division made an error under the *Department of Employment and Social Development Act* (Act).

[5] The Claimant has no arguable case for an error by the General Division. I cannot give the Claimant permission to appeal.

Issue

[6] The issue in this appeal is:

- a) Could the General Division have made an error in its decision refusing the Claimant an extension of time to appeal?

The criteria for deciding about permission to appeal

[7] I can give the Claimant permission to appeal if their application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- interpreted or applied the law incorrectly; or
- got the facts wrong.¹

Applying the criteria to the Claimant's case: there's no arguable case that the General Division made an error.

[8] The Claimant has no arguable case that the General Division made an error. The General Division had no choice but to refuse the extension of time.

[9] The Act says that an appeal cannot be brought in any case more than a year after the Minister communicates the reconsideration decision to the Claimant.²

[10] The General Division found that the Minister communicated the reconsideration decision to the Claimant in a letter that she received by May 6, 2021.³

[11] The Claimant isn't challenging the General Division's finding about when the Minister communicated the reconsideration decision to her. There is also no debate about when she filed her appeal to the Appeal Division. She filed her appeal on July 25, 2022. That's more than a year after the Minister communicated the reconsideration decision to the Claimant.

[12] I want to acknowledge that the Claimant provided me with serious reasons why she was not able to file her appeal to the General Division sooner. She explains that

¹ *Department of Employment and Social Development Act*, section 58.1(a) and (b).

² See section 52(2) of the Act.

³ See paragraph 5 in the General Division decision.

she was very unwell in terms of her physical health, and she was also hospitalized for suicidal ideation. I understand completely why the delay happened.

[13] However, the General Division had no choice but to apply the Act. The Claimant's application came in after that one-year mark. The General Division could not, under any circumstances, give her an extension of time to appeal. I have no ability to change the outcome for the Claimant either: there isn't any error in the General Division decision for me to address.

Conclusion

[14] I am refusing permission to appeal. This means the appeal won't go ahead to the next step.

Kate Sellar
Member, Appeal Division