



Citation: *ES v Minister of Employment and Social Development*, 2023 SST 210

## Social Security Tribunal of Canada Appeal Division

# Leave to Appeal Decision

**Applicant  
(Claimant):** E. S.

**Respondent:** Minister of Employment and Social Development

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**Decision  
under  
appeal:** General Division decision dated October 14, 2022  
(GP-22-1509)

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**Tribunal  
member:** Kate Sellar

**Decision  
date:** February 27, 2023

**File number:** AD-23-107

## Decision

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

## Overview

[2] E. S. (Claimant) applied under the *Canada Pension Plan* (CPP) for a division of unadjusted pensionable earnings (sometimes called a DUPE, or a credit split). The Minister of Employment and Social Development (Minister) denied the request initially and again in a reconsideration letter dated May 5, 2021. The Claimant appealed to the General Division of this tribunal on August 31, 2022.

[3] The General Division decided that the Claimant filed her appeal more than a year after the Minister communicated the reconsideration decision to her. When an appeal is past that one-year mark, the General Division cannot give an extension of time to appeal in any circumstance. As a result, the General Division refused to give the Claimant an extension of time.

[4] The Claimant appealed the General Division decision 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) that would justify granting leave (permission) to appeal.

[5] It is not arguable that the General Division made an error. I am refusing permission to appeal. The appeal will not go ahead to the next step.

## Issue

[6] The issue in this appeal is:

- a) Could the General Division have made any error in its decision refusing to grant 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.<sup>1</sup>

### **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.<sup>2</sup>

[10] The General Division found that the Minister communicated the reconsideration decision to the Claimant in a letter that she received by the end of May, 2021.<sup>3</sup>

[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 in August 2022, which is more than a year after the Minister communicated the reconsideration decision to the Claimant.

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<sup>1</sup> See the *Department of Employment and Social Development Act* (Act), section 58.1(a) and (b).

<sup>2</sup> See section 52(2) of the Act.

<sup>3</sup> See paragraph 5 in the General Division decision.

[12] The General Division had no choice but to apply the Act. The Claimant's appeal was past that one-year mark. The General Division could not, under any circumstances, give her an extension of time to appeal.

[13] The Claimant hasn't raised any argument about the one-year deadline that has a reasonable chance of success on appeal. I cannot grant the Claimant permission to appeal the General Division's decision refusing the extension of time.

[14] As a final note. I want to acknowledge that I understand the Claimant's explanation for her failure to apply for the credit split sooner after her relationship was over. She has explained that she's a survivor of domestic violence. I understand she was making choices based on her safety when her relationship ended.

[15] I understand that the Claimant has raised the credit split already at a hearing in December 1993 and again at the Pension Appeals Board. As the General Division explained, even if the General Division had been able to grant the Claimant an extension of time to appeal, her appeal would have had no chance of success. Her appeal was already decided and couldn't be decided again.<sup>4</sup>

## **Conclusion**

[16] I have refused the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division

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<sup>4</sup> The Latin word for this rule against deciding cases that have already been decided is *res judicata*. See a discussion of this issue at paragraphs 9 and 10 of the General Division's decision.