



Citation: *BP v Minister of Employment and Social Development*, 2023 SST 1163

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: B. P.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated August 1, 2023
(GP-23-1047)

Tribunal member: Kate Sellar

Decision date: **August 24, 2023**

File number: AD-23-779

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not go ahead. These are the reasons explaining my decision.

Overview

[2] B. P. (Claimant) has experienced a lot of trauma in his life. He is struggling in a lot of ways right now.

[3] He applied for a *Canada Pension Plan* (CPP) retirement pension in March 2020. The Minister of Employment and Social Development (Minister) granted the application, with payments to start in April 2020.

[4] The Claimant disagreed with the start date. He asked the Minister to reconsider. On April 29, 2021, the Minister reconsidered its decision and refused to change it.

[5] The Claimant appealed to this Tribunal on June 16, 2023. The General Division decided that the Claimant's appeal couldn't go ahead because he appealed more than a year after the Minister communicated the reconsideration decision to him.

Issues

[6] The issues in this appeal are:

- a) Can it be argued that the General Division made an error of fact that would justify giving the Claimant permission to appeal?
- b) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant 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;
- made an error of law;
- made an error of fact;
- made a mixed error of law and fact.¹

[8] I can also give the Claimant permission to appeal if their application sets out evidence that wasn't presented to the General Division.²

[9] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

There's no argument that the General Division made an error of fact

[10] The Claimant argues that he has complex post-traumatic stress disorder that makes it difficult to focus and hold down a job. He experiences overwhelming depression. The Claimant seems to argue that the General Division didn't understand or take these issues into account when making its decision. Ignoring evidence can be an error of fact.

[11] There's no arguable case that the General Division made an error of fact here by ignoring important evidence. The law says that the General Division cannot give an extension of time if the Claimant's appeal is more than a year after the Minister communicates its reconsideration decision.³ The General Division must apply that law.

[12] In this case, the reconsideration letter was dated April 29, 2021 and the Claimant said he received it on July 13, 2021.⁴ The Claimant appealed to the General Division on

¹ See sections 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).

² See section 58.1 (c) in the Act.

³ See section 52(2) of the Act.

⁴ See GD1-1.

June 16, 2023. Since the Claimant was more than a year late, the General Division couldn't give the Claimant an extension of time past that one-year mark in any circumstance. Information about the impact of the Claimant's disability on his daily life wasn't evidence that the General Division could consider in reaching its decision about the extension of time.

The Claimant hasn't set out any new evidence

[13] The Claimant hasn't set out any new evidence that the General Division didn't have. As a result, new evidence cannot form the basis for giving the Claimant permission to appeal.

[14] I've reviewed the record. I'm satisfied that the General Division didn't ignore or misunderstand any other important evidence.⁵ The General Division couldn't allow the Claimant's appeal to go forward for any reason because it was too late.

Conclusion

[15] I have refused to give the Claimant permission to appeal. This means that the appeal will not go ahead.

Kate Sellar
Member, Appeal Division

⁵ The Appeal Division completes this kind of review consistent with the Federal Court decision in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.