



Citation: *AY v Minister of Employment and Social Development*, 2024 SST 230

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** A. Y.

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

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**Decision under appeal:** General Division decision dated January 17, 2024  
(GP-23-1566)

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**Tribunal member:** Kate Sellar

**Decision date:** **March 6, 2024**

**File number:** AD-24-120

## Decision

[1] I'm refusing to give the Claimant leave (permission) to appeal. The appeal will not proceed. These are the reasons for my decision.

## Overview

[2] A. Y. (Claimant) applied for a Canada Pension Plan (CPP) retirement pension on December 20, 2021. On January 8, 2022, the Minister of Employment and Social Development (Minister) approved the application with an effective date of January 2022.

[3] On May 23, 2023, the Claimant asked the Minister to reconsider its decision. He wanted his pension to start in June 2019 when he had turned 60 years old. He said he wasn't informed that he could apply for retirement at age 60.

[4] On July 31, 2023, the Minister refused the Claimant's request for an extension of the 90-day time limit to apply for reconsideration. The Claimant appealed to this Tribunal.

[5] The General Division dismissed the appeal, finding that the Minister acted judicially when it refused to give the Claimant an extension of time to request reconsideration.

[6] The Claimant requests permission to appeal the General Division's decision.

## Issues

[7] The issues in this appeal are:

- a) Is there an arguable case that the General Division was biased?
- b) Is there an arguable case that the General Division made an error of law or an error of jurisdiction that would justify granting the Claimant permission to appeal?
- c) Does the application set out evidence that wasn't presented to the General Division?

## **I'm not giving the Claimant permission to appeal**

[8] I can give the Claimant permission to appeal if the 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; or
- made an error applying the law to the facts.<sup>1</sup>

[9] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.<sup>2</sup>

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

## **The Claimant hasn't raised an arguable case for bias by the General Division.**

[11] The Claimant argues that the General Division was biased.

[12] To decide whether there is a reasonable apprehension of bias, the correct legal question is to ask is: what would a reasonably well-informed person, viewing the matter realistically and practically, having thought the matter through, conclude?<sup>3</sup> The person considering the bias must be reasonable and the apprehension of bias must be reasonable in the circumstances of the case.<sup>4</sup>

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

<sup>2</sup> See section 58.1(c) in the Act.

<sup>3</sup> This test comes from the Supreme Court of Canada in *Committee for Justice and Liberty et al. v National Energy Board et al.*, [1978] 1 SCR 369, 1976 CanLII 2 (SCC).

<sup>4</sup> *R. v S. (R.D.)* 1997 CanLII 324 (SCC), [1997] 3 SCR 484.

[13] The Claimant hasn't pointed to anything specific in the General Division's actions or decision that shows bias. The General Division's conclusion on the appeal isn't evidence of bias. The Claimant hasn't met the test for showing that there is a reasonable apprehension of bias by the General Division that would give rise to an error about the fairness of the process.<sup>5</sup>

**The Claimant hasn't raised an arguable case for an error of law or of jurisdiction.**

[14] The General Division was only deciding whether the Minister acted judicially when it refused to give him an extension of time to request reconsideration. I see no evidence of an error of law or of jurisdiction by the General Division. The General Division's decision:

- describes decision the Minister had to make (the criteria for granting an extension of time to reconsider its decision);<sup>6</sup>
- describes what acting judicially means and listed the signs of a decision that is not made judicially;<sup>7</sup>
- explains that it is the Claimant's job to show that the Minister didn't act judicially when it decided to refuse an extension of time to request reconsideration;<sup>8</sup> and
- concludes that there was no evidence of the Minister failing to make the decision judicially.<sup>9</sup>

[15] The Claimant argues that the General Division should have required the Minister to provide evidence about what documents the Minister sent to the Claimant.<sup>10</sup>

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<sup>5</sup> A reasonable apprehension of bias would be a fair process error under s. 58.1(a) of the Act, which requires the General Division to follow the rules of natural justice.

<sup>6</sup> See paragraphs 18 to 21 in the General Division decision.

<sup>7</sup> See paragraphs 22 to 23 in the General Division decision.

<sup>8</sup> See paragraph 24 in the General Division decision.

<sup>9</sup> See paragraphs 25 to 34 in the General Division decision.

<sup>10</sup> See AD1-2.

[16] The General Division acknowledged that the Claimant said he didn't receive the Minister's decision dated January 8, 2022. The Minister said they did not have a returned mail or undelivered mail notice on file, and that they sent all letters to the Claimant at the same address.<sup>11</sup>

[17] The General Division doesn't have the jurisdiction to order any party to produce any specific piece of evidence as part of the appeal process. The General Division weighed the available evidence about the initial decision and decided that the Minister communicated its decision, despite the Claimant's evidence that he didn't receive it.

[18] Failing to require the Minister to prove that the Claimant received the decision letter doesn't raise an arguable case for an error of law or an error of jurisdiction by the General Division. The General Division decided only what it had the power to decide with the available evidence.

### **The Claimant hasn't provided any new evidence.**

[19] The Claimant hasn't provided any new evidence at the Appeal Division that wasn't already presented at the General Division. Accordingly, new evidence cannot form the basis for permission to appeal.

### **Conclusion**

[20] I've refused to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division

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<sup>11</sup> See paragraph 15 in the General Division decision.