



Citation: *MR v Minister of Employment and Social Development*, 2024 SST 399

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: M. R.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated January 3, 2024
(GP-23-1376)

Tribunal member: Kate Sellar

Decision date: **April 19, 2024**

File number: AD-24-295

Decision

[1] I'm granting an extension of time for the Claimant (M. R.) to apply to the Appeal Division. However, I'm refusing to give the Claimant leave (permission) to appeal. The appeal won't proceed. These are the reasons for my decision.

Overview

[2] The Claimant's uncle died in March 2023. The Claimant applied for a Canada Pension Plan (CPP) death benefit. She explains that she was the person responsible for her uncle's funeral expenses.

[3] The Minister of Employment and Social Development (Minister) denied the application initially and in a reconsideration letter. The Claimant appealed the Minister's decision to this Tribunal.

[4] The General Division dismissed the Claimant's appeal. The General Division decided that the Claimant can't access the death benefit because her uncle didn't make enough contributions to the CPP.

Issues

[5] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) If so, should I extend the time for filing the application?
- c) Is there an arguable case that the General Division made an error that would justify giving the Claimant permission to appeal?
- d) Does the application set out evidence that wasn't presented to the General Division?

Analysis

The application was late.

[6] Claimants have 90 days from the day the Tribunal communicates the General Division decision to file an application at the Appeal Division.¹

[7] The General Division decision is dated January 3, 2024. The Claimant confirmed receiving the decision on January 3, 2024.²

[8] The Claimant appealed the General Division decision on April 16, 2024.³ The Claimant appealed to the Appeal Division more than 90 days after the General Division communicated its decision, so the application is late.

I'm extending the time for filing the application.

[9] When deciding whether to grant an extension of time, I must consider whether the Claimant has a reasonable explanation for why the application is late.⁴

[10] The Claimant is unrepresented. She explains that she wasn't initially going to appeal. However, as time passed, she felt increasingly uneasy about the General Division decision.⁵ She decided to appeal.

[11] The Claimant's reason for the delay is reasonable. The Claimant didn't have legal representation. It would have been better for her to make a final decision about whether she wanted to appeal within the 90 days. However, her thinking about the General Division decision evolved over time. The result was that she appealed only several weeks late. The explanation is reasonable and I'm extending the time for filing the application.

¹ See section 57(1)(b) in the *Department of Employment and Social Development Act* (Act).

² See AD1-2.

³ See AD1.

⁴ It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

⁵ See AD1-6.

I'm not giving the Claimant permission to appeal.

[12] 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.⁶

[13] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.⁷

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

– No arguable case for an error

[15] The Claimant argues that the General Division made an error by focusing too narrowly on the facts about her uncle's contributions. She points out that she paid out of pocket for the cremation in good faith because she believed the government would reimburse her. If she had known that her uncle's contribution history was too low to qualify for the CPP death benefit, she wouldn't have applied.⁸

[16] The Claimant hasn't raised an arguable case for any error by the General Division. The deceased contributor had 7 years of valid contributions to the CPP from 1966 to 2005 (his contributory period). The General Division explained that the CPP allows for a death benefit if the deceased contributor had contributed to the CPP for at

⁶ See section 58.1(a) and (b) in the *Department of Employment and Social Development Act (Act)*.

⁷ See section 58.1(c) in the Act.

⁸ See AD1-3.

least one-third of the total number of years in his contributory period, with a maximum requirement of 10 years.⁹

[17] The deceased contributor didn't have sufficient contributions to the CPP to meet the requirements, and the Claimant agrees about that fact.¹⁰

[18] The Claimant wanted the General Division to grant the death benefit because she incurred the cost of cremation in good faith. However, the General Division explained that it doesn't have the authority to make a decision that is inconsistent with the law about who qualifies for the death benefit.¹¹

[19] The Claimant hasn't raised any arguable case that the General Division could have made an error about what it has the power to decide, the law about the death benefit, or the facts about the deceased contributor's contributions to the CPP.

[20] Since the Claimant hasn't raised an arguable case for an error by the General Division, I cannot grant permission to appeal.

– **No new evidence**

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

[22] I've reviewed the record.¹² I'm satisfied that the General Division didn't ignore or misunderstand any important evidence.

⁹ See section 44(1)(c) and 44(3) of the *Canada Pension Plan* (CPP) and paragraph 7 in the General Division decision. Contributions need to be a third of the contributory period, to a maximum of 10 years.

¹⁰ See paragraphs 11 and 12 in the General Division decision.

¹¹ See paragraph 14 in the General Division decision.

¹² For more on this type of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

Conclusion

[23] I granted an extension of time. I refused permission to appeal. This means that the appeal won't proceed.

Kate Sellar
Member, Appeal Division