



Citation: *NT v Minister of Employment and Social Development*, 2024 SST 1319

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

# **Leave to Appeal Decision**

**Applicant:** N. T.

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

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**Decision under appeal:** General Division decision dated July 22, 2024  
(GP-24-994)

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**Tribunal member:** Kate Sellar

**Decision date:** **October 31, 2024**

**File number:** AD-24-694

## Decision

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

## Overview

[2] The Claimant applied for a *Canada Pension Plan* (CPP) survivor's pension on November 1, 2022. The Minister of Employment and Social Development (Minister) refused her application initially and in a reconsideration letter dated May 8, 2023.<sup>1</sup> The Claimant stated in her appeal that she received the reconsideration letter on May 8, 2023.<sup>2</sup>

[3] The Claimant appealed to this Tribunal on May 28, 2024.<sup>3</sup> The General Division explained that the appeal couldn't go ahead because the Claimant didn't appeal in time.

## Issues

[4] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of law by focusing on whether the application was too late to go ahead?
- b) Is there an arguable case that the General Division proceeded in a way that was unfair given the timing of the communications the Claimant received?
- c) Does the application set out evidence that wasn't presented to the General Division?

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<sup>1</sup> See GD2-17.

<sup>2</sup> See GD1-1.

<sup>3</sup> See GD1.

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

[5] 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>4</sup>

[6] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.<sup>5</sup>

[7] 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 arguable case that the General Division made an error of law by focusing on whether the Claimant's appeal was too late to go ahead.**

[8] The Claimant argues that the General Division made an error by focusing on the date she filed her appeal, instead of focusing on her disability and the reasons she appealed in the first place.<sup>6</sup>

[9] The General Division explained what the law says. If a claimant disagrees with the Minister's reconsideration decision, they have to appeal to the Tribunal within 90 days after the Minister told them about the decision. If the claimant appeals after the deadline, the Tribunal can give them more time (accept the late appeal). But **in no case**

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<sup>4</sup> See section 58.1(a) and (b) in the *Department of Employment and Social Development Act (Act)*.

<sup>5</sup> See section 58.1(c) of the Act.

<sup>6</sup> See AD1-3.

can the claimant appeal a reconsideration decision more than one year after the Minister told them about it.<sup>7</sup>

[10] The Claimant stated that she received the reconsideration letter on May 8, 2023, and the Tribunal received her appeal on May 28, 2024. The General Division explained that she was more than a year late, and so it could not give the claimant more time (accept the late appeal).<sup>8</sup>

[11] The Claimant hasn't provided an arguable case for an error of law. The General Division explained how it followed the law about late appeals. The General Division explained that it doesn't have the power to proceed with the appeal when it's more than a year late, regardless of the circumstances. The Claimant hasn't provided any reason that's grounded in law that would show that the way the General Division understood and applied the law was in error.

**There's no arguable case that the General Division failed to provide the Claimant with a fair process because of the timing of the letters she received.**

[12] The Claimant argues that the General Division failed to provide her with a fair process. She received a letter on June 27, 2024 from the Tribunal explaining that her file was going to be reviewed and that a tribunal member was going to decide whether to allow the late filing of her appeal. However, in reality, the Claimant says that the General Division had already decided that the appeal wouldn't go ahead on June 22, 2024.<sup>9</sup>

[13] When a claimant raises a concern about fairness, the ultimate questions are:

- whether that claimant knew the case they had to meet and had a chance to respond; and

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<sup>7</sup> See paragraphs 6 and 7 in the General Division decision, quoting from section 52(1) and (2) in the Act.

<sup>8</sup> See paragraphs 8 to 12 in the General Division decision.

<sup>9</sup> See AD1-3.

- whether that claimant had an impartial decision maker consider the case fully and fairly.<sup>10</sup>

[14] The Claimant hasn't raised an arguable case for a failure to provide her with a fair process. The General Division decision is dated July 22, 2024, not June 22, 2024. Accordingly, the General Division issued its decision after the June 27, 2024 letter explaining the next step.

[15] The Claimant hasn't raised any arguable case for an error relating to the fairness of the process. The Tribunal advised her of the case to be met and then issued its decision accordingly. She hasn't provided any information about the lateness that she didn't have a chance to provide or explain to the General Division before it issued its decision. She hasn't raised any allegation about a lack of impartiality that I need to consider either.

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

[16] The Claimant hasn't provided any evidence that wasn't already presented to the General Division. So, new evidence also cannot form the basis for giving the Claimant permission to appeal.

[17] I've reviewed the record.<sup>11</sup> I'm satisfied that there's no arguable case that the General Division ignored or misunderstood any other evidence that could impact the result for the Claimant.

### **Conclusion**

[18] I've refused to give the Claimant permission to appeal. This means that the appeal will not go ahead.

Kate Sellar  
Member, Appeal Division

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<sup>10</sup> See paragraph 10 in *Kuk v Canada (Attorney General)*, 2024 FCA 74.

<sup>11</sup> For more on this kind of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.