



Citation: *JM v Minister of Employment and Social Development*, 2024 SST 1435

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated September 30, 2024
(GP-24-1176)

Tribunal member: Kate Sellar

Decision date: **November 20, 2024**

File number: AD-24-748

Decision

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

Overview

[2] The Claimant got divorced in 2008.

[3] In 2009, she applied for a *Canada Pension Plan* (CPP) Division of Unadjusted Pensionable Earnings (DUPE or "credit split") between herself and her former spouse.

[4] The Minister of Employment and Social Development (Minister) confirmed the credit split in 2009.

[5] The Claimant's former spouse died in 2018. The Claimant applied for a survivor's pension in June 2019. The Minister refused her application. The Claimant asked the Minister to reconsider its decision denying her a survivor's pension. She also asked the Minister to reverse the 2009 credit split.

[6] On October 21, 2019, the Minister reconsidered and maintained its decision.¹ The Claimant wasn't eligible for the survivor's pension because she and the former spouse were divorced and not in a common law relationship together for at least a year before the former spouse died. The Minister also explained it could not reverse the credit split for a divorced spouse after the other spouse has died.

[7] The Claimant appealed to this Tribunal several years later on July 4, 2024.² The General Division refused to proceed with the appeal because the Claimant appealed more than a year after the Minister communicated its reconsideration decision.

¹ See GD2-22.

² See GD1-1.

Issues

[8] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error by failing to consider the reasons why the Claimant's appeal was late?
- b) Could the Claimant's Charter arguments form the basis for finding any error by the General Division?
- c) Does the application set out evidence that wasn't presented to the General Division that could justify giving the Claimant permission to appeal?

I'm not giving the Claimant permission to appeal

[9] 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.³

[10] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.⁴

[11] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence that relates to the issues on appeal, I refuse to give permission to appeal.

³ See section 58.1(a) and (b) in the *Department of Employment and Social Development Act (Act)*.

⁴ See section 58.1(c) in the Act.

There's no arguable case that the General Division made an error of fact by failing to consider the reasons why the Claimant was late.

[12] The Claimant argues that she had good reasons for the delay in appealing to the General Division decision. It seems the Claimant is arguing that the General Division should have considered her reasons and allowed the appeal to proceed.⁵

[13] The General Division explained that if a claimant disagrees with a reconsideration decision, they need to appeal to the Tribunal within 90 days after the Minister communicates the decision.⁶

[14] If a claimant appeals after that 90-day mark, the Tribunal can give them more time and accept the late appeal. But **in no case** can a claimant appeal a reconsideration decision more than one year after the Minister tells them about it.⁷ In other words, the Tribunal doesn't have the power to grant an extension of time after that one-year mark passes.

[15] The General Division found that the Claimant was past the one-year mark and therefore her appeal could not proceed.⁸

[16] The General Division acknowledged the reasons why the Claimant's appeal was late. Her father was ill and then died, she moved several times, and the Claimant herself was also ill. The pandemic also played a role in the delay. However, the General Division explained that it didn't have the ability to allow the appeal to go ahead because it must follow the law.⁹ The law does not allow the General Division to proceed with an appeal that is past the one-year mark.

[17] The Claimant hasn't raised an arguable case for an error of fact by the General Division.

⁵ See AD1B-2 to 3.

⁶ See section 52(1) in the Act. The General Division discussed this in its decision at paragraph 8.

⁷ See section 52(2) in the Act. The General Division discussed this in its decision at paragraph 9.

⁸ See paragraphs 12 to 15 in the General Division decision.

⁹ See paragraphs 16 and 17 in the General Division decision.

The Claimant's Charter arguments cannot form the basis for any error by the General Division.

[18] The Claimant argues that the outcome at the General Division breaches her right to equal treatment and security of the person under the Charter.¹⁰ The Claimant says that she did not receive equal benefit of the law because the Minister awarded her ex-spouse the credit split while the Claimant "was denied the share of [her] pension contributions."¹¹

[19] Further, the Claimant argues that the fact that the General Division didn't proceed with the appeal based only on the fact that it was late is inconsistent with the principles of fundamental justice. The reasons for her late appeal were beyond her control and she didn't have the logistical or emotional capacity to appeal earlier.

[20] The problem here is that the Claimant didn't raise a Charter argument at the General Division. She only mentioned a possible violation of the Charter at the Appeal Division.

[21] I can only give the Claimant permission to appeal based on the criteria I outlined above in paragraph 9.

[22] I have reviewed the record and found no reference to the Charter by the Claimant at the General Division level. The Claimant didn't raise (and therefore the General Division didn't address) any Charter arguments. There are no Charter arguments in the file that would lead me to find that the General Division might have failed to provide a fair process or made any error of fact, law, or mixed law and fact. I cannot grant the Claimant permission to appeal so that she can bring a Charter case now.

[23] The Claimant's Charter argument cannot form the basis for giving her permission to appeal because it's not connected to any possible error that the General Division might have made.

¹⁰ See AD1B-4 and 5.

¹¹ See AD1B-4.

The Claimant hasn't provided any new evidence that would justify granting permission to appeal.

[24] The Claimant provided some evidence that wasn't already presented to the General Division as follows:

- correspondence showing a request for assistance from an elected official
- documents related to the Claimant's father's death (estate-related documents)
- a document about the Claimant's daughter's post-secondary education
- some medical reports about the Claimant
- documents showing receipt of workplace accommodations
- proof of identification (as one of her medical reports contained an incorrect date of birth).¹²

[25] These documents help explain why the Claimant appealed late. However, the law doesn't allow the Claimant's matter to proceed because it's more than a year late. Accordingly, this additional information cannot form the basis for giving permission to appeal. Unfortunately, the Claimant's reasons for appealing late aren't relevant since the law doesn't allow the Tribunal to consider them.

[26] I've reviewed the record.¹³ I'm satisfied that there isn't any evidence that the General Division ignored or misunderstood that could have impacted the result for the Claimant.

Other Issues

[27] The Claimant is perplexed by the Tribunal's process. The Claimant wonders why the Tribunal processes appeals at all if they are after the one-year mark if they have no

¹² See AD1-9 and following.

¹³ For more on this type of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

chance of proceeding.¹⁴ The Claimant also wonders why the Tribunal asks for information about why the appeal was late if the reasons for the delay are irrelevant.

[28] I can explain. The reason the Tribunal processes appeals even if they **appear** late is that sometimes an appeal that appears late is not **actually** late.

[29] For example, by inviting a claimant to explain why they are late, a claimant might explain that they never received the reconsideration decision, or they didn't receive it in a timely manner for some reason. So, although the date on the reconsideration letter suggests a claimant is past the one-year mark, they may only be past the 90-day mark. If that's the case, the law allows the General Division to consider an extension of time which would allow the appeal to proceed.¹⁵ In that instance, the reason for the delay becomes important for the General Division to consider.

Conclusion

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

Kate Sellar
Member, Appeal Division

¹⁴ See AD1B-3.

¹⁵ See section 52(2) in the Act.