



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. R. v. Minister of Employment and Social Development*, 2016 SSTGDIS 51

Tribunal File Number: GP-16-1618

BETWEEN:

**J. R.**

Appellant

and

**Minister of Employment and Social Development  
(formerly Minister of Human Resources and Skills Development)**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Verlyn Francis

DATE OF DECISION: July 7, 2016

## REASONS AND DECISION

### INTRODUCTION

[1] The Appellant applied for a *Canada Pension Plan* disability pension. The Respondent denied the application initially and, in a decision letter dated September 30, 2015, denied the application upon reconsideration. The Appellant appealed that decision to the Tribunal on May 6, 2016, beyond the 90-day limit set out in paragraph 52(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

### ISSUE

[2] The Tribunal must decide whether to allow an extension of time for the Appellant to appeal pursuant to subsection 52(2) of the DESD Act.

### ANALYSIS

[3] The Tribunal finds that the appeal was filed after the 90-day limit. The Respondent's reconsideration decision was dated September 30, 2015. The Tribunal assumes that the reconsideration decision was sent to the Appellant by mail. The Tribunal takes judicial notice of the fact that mail in Canada is usually received within 10 days. In other circumstances, the Tribunal would have found that the reconsideration decision was communicated to the Appellant by October 10, 2015 and, in accordance with paragraph 52(1)(b) of the DESD Act, the Appellant would have until January 8, 2016 to file an appeal.

[4] In this case, however, in a letter received on July 10, 2015, the Appellant's representative advised the Respondent that it had been retained to represent the Appellant, requested the reconsideration of the initial decision, and provided a Notice of Change of Address and Direction and Authorization directing that all future correspondence be sent to the representative's office.

[5] In its letter dated July 22, 2015 addressed to the Appellant's representative, the Respondent acknowledged receipt of the representative's request to reconsider the denial of the Appellant's disability benefits, and indicated it would advise the Appellant and her representative as soon as it made a decision.

[6] By letter dated April 28, 2016 and received by the Tribunal on May 6, 2016, the Appellant's representative indicated that they had recently been provided with a copy of the September 30, 2015 reconsideration decision which was addressed only to the Appellant. The representative set out its intention to file an appeal shortly. The Appellant filed an appeal on May 15, 2016, outside the 90-day limit.

[7] In deciding whether to allow further time to appeal, the Tribunal considered and weighed the four factors set out in *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883. The overriding consideration is that the interests of justice be served (*Canada (Attorney General) v. Larkman*, 2012 FCA 204).

### **Continuing Intention to Pursue the Appeal**

[8] The Respondent submits that the appeal was filed with the Tribunal on May 12, 2016, more than 215 days following receipt of the reconsideration letter. The Appellant contacted the Respondent on October 6, 2015 to register a change of address but did not demonstrate a continuing intention to pursue her appeal within the 90-day time limit.

[9] The Respondent confirmed that it would send a copy of the reconsideration decision to the Appellant and her representative. It did not send a copy of the decision to the representative. The registration of a change of address by the Appellant after the reconsideration decision was released indicates an intention to continue to receive information about her application. That there was a breakdown in communication on the Respondent's part does not show a lack of intention to pursue the appeal of a decision that was not communicated in the manner expressly requested and acknowledged by the Respondent. Once the Appellant's representative received information of the existence of the reconsideration decision, they promptly filed the Notice of Appeal.

[10] The Tribunal finds that the Appellant had a continuing intention to pursue the appeal.

### **Arguable Case**

[11] The Appellant claims that she could no longer work because of her medical conditions as of July 13, 2013. She describes her medical conditions as back, shoulder and neck pain, carpal tunnel, constant dizziness, major depression, and mood swings.

[12] On appeal, the Appellant would have to establish a severe and prolonged disability within the meaning of the CPP on or before December 31, 2016 the minimum qualifying period as stated in the file.

[13] The Respondent submits that, even though an arguable case can exist when the decision to deny benefits is disputable, debatable or open to discussion, the Appellant has not submitted any new medical evidence to show that there is an arguable case. The Tribunal agrees that an arguable case can exist on the Respondent's decision to dismiss an application. That is the rationale behind the CPP appeal process which provides a mechanism to review the Respondent's decisions. While new medical evidence might be helpful on appeal, that is not the deciding factor in whether there is an arguable case. An Appellant may adduce subjective or objective evidence at the hearing of an appeal which might be persuasive on its own or could permit another interpretation of the medical evidence and other material on file.

[14] The Tribunal is satisfied that there is medical evidence related to the Appellant's medical conditions at the time around the minimum qualifying period.

[15] The Tribunal finds, based on the Appellant's submissions and the medical evidence on file, that there is an arguable case on appeal.

### **Reasonable Explanation for the Delay**

[16] The Appellant submits that it was delayed in filing the appeal because the Respondent failed to communicate the reconsideration decision to her representative as requested in the letter dated July 22, 2015 and her language skills contributed to the delay. The Respondent submits that this explanation is reasonable.

[17] The Tribunal finds that the Appellant provided a reasonable explanation for the delay in filing the appeal.

### **Prejudice to the Other Party**

[18] The Respondent submits that it would be able to respond to an appeal and would not be prejudiced if an extension were allowed.

[19] The Tribunal finds that the Respondent's interests do not appear to be prejudiced given the circumstances of this case. The Minister's ability to respond, given its resources, would not be unduly affected by an extension of time to appeal.

## **CONCLUSION**

[20] In consideration of the *Gattellaro* factors and in the interests of justice, the Tribunal allows an extension of time to appeal pursuant to subsection 52(2) of the DESD Act.

Verlyn Francis  
Member, General Division - Income Security