



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. H. v. Minister of Employment and Social Development*, 2017 SSTGDIS 76

Tribunal File Number: GP-17-355

BETWEEN:

**L. H.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

---

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

---

DECISION BY: Anne S. Clark

DATE OF DECISION: June 12, 2017

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] The Appellant applied for a *Canada Pension Plan* (CPP) disability pension on November 13, 2014. The Respondent denied the application initially and, in a decision letter dated October 14, 2015, allowed the application upon reconsideration.

[2] The Appellant disagreed with the date her disability benefits began. In a letter dated August 31, 2016 the Appellant's Representative wrote to the Respondent to appeal the effective date of the Appellant's pension.

[3] The Respondent incorrectly identified the August 31, 2016 letter as a late request for reconsideration and requested additional information from the Appellant. On January 4, 2017 the Respondent informed the Appellant that the August 31, 2017 letter was incorrectly identified and the Respondent could not address the Appellant's request to appeal the October 14, 2015 reconsideration decision. The Respondent referred the Appellant to the Social Security Tribunal (Tribunal) to appeal to the reconsideration decision.

[4] The Appellant appealed the reconsideration decision to the Tribunal on February 21, 2017, beyond the 90-day limit set out in paragraph 52(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

### **ISSUE**

[5] I must decide whether to allow the Appellant further time to appeal pursuant to paragraph 52(2) of the DESD Act.

### **ANALYSIS**

[6] I find the appeal was filed after the 90-day limit. The Respondent's reconsideration decision was dated October 14, 2015. The Appellant's Representative confirmed that the Appellant would have received the decision by October 26, 2015.

[7] In accordance with paragraph 52(1)(b) of the DESD Act, the Appellant had until January 24, 2016, to file an appeal.

[8] The Appellant filed an incomplete appeal on February 6, 2017. In a letter dated February 7, 2017, the Tribunal informed the Appellant that her appeal was incomplete as she failed to provide the Tribunal with the reconsideration decision and the date on which the reconsideration decision was communicated to her. The Appellant filed the missing information on February 21, 2017, making the appeal complete more than one year after the date the reconsideration decision was communicated to the Appellant.

[9] The Appellant's right to request an extension of time to appeal under subsection 52(2) of the DESD Act would be adversely affected if her appeal was filed more than one year after the date the reconsideration decision was communicated to her. Before I can proceed with her request for further time to appeal I must determine if I can consider her appeal filed within one year of the date the reconsideration decision was communicated to her.

[10] Paragraph 3(1)(b) of the Regulations allows the Tribunal to, in special circumstances, dispense a party from compliance with a provision. The Appellant's Representative and the Respondent both made procedural errors. The Representative incorrectly sent a letter of appeal to the Respondent instead of the Tribunal. The Respondent incorrectly identified the letter as a late request for reconsideration causing further delay. I do not find that these errors were made intentionally to misdirect or mislead. However, I do consider them to be special circumstances that contributed to the considerable time that passed before the Appellant's appeal was, in fact, filed with the Tribunal.

[11] In order to consider the Appellant's request for an extension of time to appeal I dispense the Appellant from complying with the requirement under s. 23 of the Regulations that the appeal be filed at the Tribunal's address. I find the August 31, 2016, letter to the Respondent satisfies that requirement. Further I dispense the Appellant from complying with the requirements under s. 24(1)(a) and (b). Accordingly I find the Appellant's appeal was complete on August 31, 2016, when her Representative submitted a letter of appeal to the Respondent's address.

[12] Even with the exceptions to the provisions of the Regulations, the appeal was filed seven months after the end of the 90-day limitation period. I must now consider whether to allow further time for the Appellant to appeal.

[13] In deciding whether to allow further time to appeal, I 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**

[14] The Appellant's Representative confirmed that the Appellant contacted her on August 31, 2016, to pursue an appeal. The evidence on file does not indicate earlier actions of the Appellant or her Representative that would demonstrate a continuing intention to pursue an appeal.

[15] I find that the Appellant did not demonstrate a continuing intention to pursue an appeal until approximately seven months after the end of the legislated 90-day limitation period.

### **Arguable Case**

[16] The Appellant claims that her benefits should begin on December 3, 2009, and not December 1, 2013. She argues that she should be entitled to an earlier effective date to coincide with her private insurance benefits.

[17] A person cannot be deemed disabled more than fifteen months before the Respondent received the application for a disability pension (paragraph 42(2)(b) CPP). There is no information on file or in submissions that would cause me to question the date the Respondent received the application. The application was received in November 2014; therefore the Appellant cannot be deemed disabled before August 2013. According to section 69 of the CPP, payments start four months after the deemed date of disability. The Appellant's payments started in December 2013 which is the earliest date they could start considering the rules set out above and the date of her application.

[18] On appeal, the Appellant would have to establish that she is entitled to an earlier date of onset. Her benefits were calculated using the earliest date allowed under the CPP given her date of application. Therefore, based on the Appellant's submissions and the evidence on the file, I find there is no arguable case on appeal.

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

[19] The Appellant's appeal was fraught with errors and/or delays on the part of the Appellant, her Representative and the Respondent. The Appellant did not initiate any attempt to appeal until August 2016 which was seven months after the 90-day limitation period expired. She offered no explanation for that delay. Once the Appellant initiated her attempt to appeal there were a number of errors that caused delays in making the appeal and more than one year passed before her appeal to the Tribunal was complete. The information on file and submissions explain the events that caused or contributed to the delay after August 2016. There is no reasonable explanation for the Appellant's failure to file an appeal before August 2016.

[20] I find that the Appellant did not provide a reasonable explanation for the seven-month delay in initiating an appeal process.

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

[21] The Respondent's interests do not appear to be prejudiced. The Minister's ability to respond, given its resources, would not be unduly affected by an extension of time to appeal. However, considering my findings on other factors, this factor does not carry enough weight to change my decision.

### **Extenuating Circumstances**

[22] The Appellant submitted that she should not be held to strict or mandatory limitation periods for a number of reasons. They include that:

- a) she was not informed, in sufficient detail, of the existence of limitation periods;
- b) the time limits in the legislation are not easily identified by members of the general public;
- c) she was not informed that the limitation periods were mandatory; and
- d) she has been found to be unfit for her chosen profession and given the nature of her pain conditions it would be unreasonable to require her to meet a strict 90-day deadline.

[23] The Tribunal is created by legislation and, as such, only has the power granted to it by the governing statute and regulations. Therefore, I am required to interpret and apply the provisions as they are set out in the statutes and regulations. I cannot consider extenuating circumstances to disregard mandatory requirements under the law.

[24] I could identify special circumstances and have the authority under the Regulations to allow the Appellant's application to proceed as a regular application for further time. I do not find any special circumstances or authority to excuse the Appellant from meeting the mandatory limitation periods.

### **CONCLUSION**

[25] In consideration of the *Gattellaro* factors and the interests of justice, I find an extension of time to appeal is not required to serve the interests of justice. The Appellant did not demonstrate an intention to pursue an appeal or provide a reasonable explanation for the delay until August 2016. Finally, and most compelling is the fact that the Appellant does not have an arguable case on appeal because she received the maximum retroactive benefits she can receive given her date of application.

[26] For the reasons above, I do not allow an extension of time to appeal pursuant to subsection 52(2) of the DESD Act.

Anne S. Clark  
Member, General Division - Income Security