



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. M. v. Minister of Employment and Social Development*, 2017 SSTADIS 531

Tribunal File Number: AD-17-541

BETWEEN:

**R. M.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Decision by: Valerie Hazlett Parker

Date of Decision: October 30, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] The Applicant applied for a *Canada Pension Plan* (CPP) disability pension and claimed that he was disabled by back pain and associated limitations. The Respondent refused his application initially and after reconsideration. On May 26, 2003, a review tribunal dismissed his appeal of the Respondent's decision. The Applicant then appealed this decision to the Pension Appeals Board (PAB). On June 9, 2004, this appeal was dismissed (PAB 1).

[2] On September 15, 2004, the Applicant, by letter, requested that this PAB decision be reopened under s. 84(2) of the CPP (as it then read). The PAB advised the Applicant that the documents he had presented at that time were not "new facts" under s. 84(2).

[3] The Applicant then made two further applications for a disability pension. Both were refused, as PAB 1 was a binding decision.

[4] By letter dated November 5, 2008, the Applicant again requested that PAB 1 be reopened under s. 84(2), claiming that a 2006 medical report and a report from Dr. Reardon dated August 13, 2009, were "new facts." The PAB refused this application on March 9, 2010 (PAB 2).

[5] On August 28, 2017, the Applicant filed the current Application. In it, he seeks to reopen a PAB decision based on new facts, which is now set out in section 66 of the *Department of Employment and Social Development Act* (DESD Act). He relies on a report dated November 2009 and Dr. Reardon's August 13, 2009, report as "new facts."

### THE LAW

[6] The DESD Act governs the operation of this Tribunal. Subsection 66(1) provides that the Tribunal may rescind or amend a decision given by it in respect of any particular application if: (b) [...] a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.

[7] Subsection 66(2) states that an application to rescind or amend a decision must be made within one year of the day on which a decision was communicated to the appellant.

[8] Subsection 66(3) states that each person who is the subject of a decision may make only one application to rescind or amend that decision.

[9] Therefore, I must first decide whether this Application must be refused because it was filed beyond the time permitted in the DESD Act. If the Application is not refused for this reason, I must then decide whether it fails because it is not the Applicant's first application to rescind or amend the PAB decision. If the Application does not fail because it is not the first application made to rescind or amend a decision, I must then decide whether the Applicant has presented new facts within section 66 of the DESD Act and whether a decision should be rescinded or amended.

## **ANALYSIS**

[10] The only Application that is before me is the one dated August 28, 2017. In it, the Applicant asks that a PAB decision be rescinded or amended. It is not clear, however, whether it is the June 2004 decision or the March 2010 decision that he wishes to reopen. I will consider each decision below.

[11] The Tribunal is bound by the DESD Act. Subsection 66(2) is clear. An application to rescind or amend a decision must be made within one year of the decision being communicated to the appellant. The Applicant in this case did not state when he had received each of the PAB decisions. As the decisions were mailed to him, he would have received them within approximately 10 days of the decision. The 2017 application was made approximately 13 years after the 2004 decision. It was filed with the Tribunal well beyond the time permitted under the DESD Act. The application to rescind or amend this decision must be refused.

[12] Similarly, if it is the 2010 decision that the Applicant wished to have reopened, it must also be refused. This application was made approximately seven years after the decision had been communicated. It also had not been filed in time.

[13] This Tribunal was created by statute and has only the authority granted to it by that statute. The filing deadlines set out in the DESD Act cannot be ignored or varied on compassionate grounds or because of extenuating circumstances.

## **CONCLUSION**

[14] The Application is refused, as it was filed late.

Valerie Hazlett Parker  
Member, Appeal Division