



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. L. v. Minister of Employment and Social Development*, 2018 SST 1125

Tribunal File Number: AD-17-488

BETWEEN:

J. L.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision by: Shu-Tai Cheng

Date of Decision: October 31, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, J. L., is seeking a disability pension under the *Canada Pension Plan*. He maintains that his fibromyalgia, muscle spasms, insomnia, chronic pain, memory loss, poor concentration, headaches, and anxiety prevent him from working. He last worked in 2013.

[3] The Respondent, the Minister of Employment and Social Development, denied his request because, while the Appellant had certain restrictions arising from his medical condition, the information provided did not show that those limitations continuously prevented him from doing some type of work.

[4] The Appellant's appeal to the General Division of the Social Security Tribunal of Canada was filed late. The General Division refused to grant an extension of time, because it concluded that the appeal was filed more than one year after the Appellant had received the Respondent's decision.

[5] The Appellant filed an application with the Appeal Division arguing that the General Division had not taken into consideration the reasons for the delay in filing the appeal. Leave to appeal was granted on the basis of a possible error of law or serious error in the findings of fact.

[6] I find that the General Division did not commit any reviewable errors.

ISSUES

[7] Did the General Division base its decision on errors in its findings of fact that it made without regard for the material before it by finding that the appeal was filed more than one year late?

[8] If the General Division did err, should the Appeal Division refer the matter back to the General Division for reconsideration or can the Appeal Division render the decision that the General Division should have rendered?

ANALYSIS

[9] The only grounds of appeal to the Appeal Division are that the General Division erred in law, failed to observe a principle of natural justice, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.¹ Because the General Division may have erred in law when making its decision or based its decision on a serious error in the finding of facts, the Appeal Division granted leave to appeal.

[10] The Appeal Division does not owe any deference to the General Division on questions of natural justice, jurisdiction, or law.² In addition, the Appeal Division may find an error in law whether or not it appears on the face of the record.³

[11] Where an erroneous finding of fact is alleged, the decision must be based on that finding of fact, and the finding must be made in a perverse or capricious manner or without regard for the material before it (not merely erroneous).⁴

[12] The appeal before the General Division turned on the question of whether the Appellant filed his appeal with the General Division more than one year late.

Issue 1: Did the General Division base its decision on errors in its findings of fact that it made without regard for the material before it by finding that the appeal was filed more than one year late?

[13] The General Division did not base its decision on errors in the findings of fact.

[14] The Respondent's reconsideration decision was dated April 7, 2016, and the General Division found that it had been communicated to the Appellant by April 17, 2016 (the deemed date). The time limit for the Appellant to file a notice of appeal (NoA) with the Tribunal was 90 days later: July 16, 2016.

¹ *Department of Employment and Social Development Act* (DESD Act), s. 58(1).

² *Canada (Attorney General) v. Paradis; Canada (Attorney General) v. Jean*, 2015 FCA 242, para. 19.

³ DESD Act, s. 58(1)(b).

⁴ DESD Act, s. 58(1)(a).

[15] The Appellant filed an NoA with the General Division on November 21, 2016. The NoA stated as the reasons for filing late that there was a new medical report and that he had debilitating pain that prevented him from doing anything. However, the NoA was incomplete because the Appellant had not attached a copy of the reconsideration decision.⁵

[16] Paragraph 24(1)(a) of the *Social Security Tribunal Regulations* states that a notice of appeal must contain a copy of the reconsideration decision.

[17] Therefore, the NoA was only completed on April 19, 2017, when the Appellant filed a copy of the reconsideration decision. As a result, the Appellant's appeal was filed more than one year after the day on which the decision was communicated to him (by two days).

[18] The Appellant argued that someone filled in the NoA on his behalf and that it indicated an old mailing address. He submitted that he did not discover this error until late March 2017, when his then representative called the Tribunal for an update on the file. It was only after this phone call that the Appellant realized that letters from the Tribunal saying that the NoA was incomplete had been sent to an old address and that he had never received them. He completed the NoA shortly after this discovery.

[19] I asked the Respondent to consider the Appellant's explanation for completing the NoA late in light of the submissions made at the oral hearing of this appeal. The Respondent asked for copies of the telephone logs in the Tribunal's file and the chance to review them before filing additional submissions in writing.

[20] The Respondent's additional submissions state that it was the Appellant's responsibility to inform the Tribunal of his correct address, and, therefore, the Appellant's explanation was irrelevant. The Respondent maintains that the Appellant took more than one year after the day on which the decision was communicated to him to file a complete NoA and that the Tribunal was not allowed to grant an extension of time.

⁵ General Division decision at para. 6.

[21] In spite of the harsh consequences, I find that, because the NoA was completed more than one year after the day on which the decision was communicated to the Appellant, the Tribunal had no discretion to grant an extension of time.⁶

[22] The General Division did not base its decision on findings of fact that it made without regard for the material before it.

[23] The General Division also did not err in law or breach any principles of natural justice. It did not commit any reviewable errors.

CONCLUSION

[24] The appeal is dismissed.

Shu-Tai Cheng
Member, Appeal Division

HEARD ON:	June 19, 2018 (with written submissions until August 27, 2018)
METHOD OF PROCEEDING:	Teleconference and additional written submissions
APPEARANCES:	Cindy Savoie, Representative for the Appellant Carole Vary, Representative for the Respondent

⁶ DESD Act, s. 52(2).