



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. B. v Minister of Employment and Social Development*, 2018 SST 1283

Tribunal File Number: AD-18-651

BETWEEN:

D. B.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Jude Samson

Date of Decision: December 14, 2018

DECISION AND REASONS

DECISION

[1] An extension of time to apply for leave to appeal is refused.

OVERVIEW

[2] The Applicant, D. B., worked as a truck driver at a mine until August 1988, when he was involved in a workplace accident. Since then, he has filed four applications for a disability pension under the *Canada Pension Plan* (CPP), none of which have been successful, though he still has one active appeal at the Tribunal's General Division.¹

[3] This appeal arises from the Applicant's second application for a CPP disability pension, which he filed in January 1996. The Respondent, the Minister of Employment and Development (Minister), denied the application initially and on reconsideration. The Applicant appealed the Minister's decision to the Office of the Commissioner of Review Tribunals (OCRT), but it dismissed his appeal in a two-page decision dated September 7, 1997.²

[4] The Applicant is now requesting leave (or permission) to appeal the OCRT's September 1997 decision, but his request was filed long after the deadline. As a result, the file can only move forward if I extend the time for the Applicant to file his appeal.

[5] Unfortunately for the Applicant, I have concluded that I do not have the legal power to grant the extension of time that he needs, meaning that his request must be refused.

ISSUE

[6] Does the Appeal Division have the legal power to grant an extension of time in this case?

ANALYSIS

[7] The Applicant filed his first application for a CPP disability pension in June 1993, but the Minister denied it. The CPP disability pension application that I am considering—the

¹ AD1A-3.

² AD1-3 and 4.

Applicant's second—was filed in January 1996, but the Minister denied it too. As mentioned above, the Applicant appealed the Minister's decision on the second application to the OCRT, but it dismissed his appeal.

[8] In the cover letter that accompanied the OCRT's September 1997 decision, the Applicant was told that he could appeal the decision to the Pension Appeals Board (PAB) and that he had 90 days to file his appeal.³ The Applicant accepts that he received the decision within a reasonable time after it was written, but he never appealed the decision to the PAB.⁴

[9] In 2012 and 2013, the Parliament of Canada made significant changes to the appeal structure in CPP disability cases, including the replacement of the OCRT and PAB by this Tribunal on April 1, 2013.⁵ Importantly, the act through which these changes were made—the *Jobs, Growth and Long-term Prosperity Act* (JGLPA)—included provisions to govern the transition from one regime to the other. Important sections of the JGLPA and of other statutes are set out in the Annex to this decision.

[10] For the purposes of this case, an important difference between the two regimes is that, under the old regime, there were no restrictions on the PAB's ability to grant extensions of time, even years after the 90-day deadline for filing an appeal had passed.⁶ Under the new regime, however, section 57(2) of the *Department of Employment and Social Development Act* (DESD Act) states that the Appeal Division cannot grant an extension of time if the request for leave to appeal is filed more than one year after the day the relevant decision was communicated to the appellant.⁷

[11] In my view, the date of the OCRT decision and the subsequent transition from the PAB to this Tribunal's Appeal Division raised questions concerning the application of the DESD Act—including its one-year limitation period—to the facts of this case. Since questions surrounding the lateness of the appeal were not thoroughly discussed in the request for leave to

³ AD1-2; CPP, s 83 (as it read at the time).

⁴ AD1A-2.

⁵ *Jobs, Growth and Long-term Prosperity Act*, SC 2012, c 19, ss 223–281. This statute received royal assent on June 29, 2012, and while many of the relevant provisions came into force on that day, others were postponed until April 1, 2013.

⁶ CPP, s 83 (as it read at the time).

⁷ DESD Act, s 57(2).

appeal, I sent certain questions to the Applicant's representative in a letter dated October 26, 2018, and her response to those questions was received on November 30, 2018.⁸

Does the Appeal Division have the legal power to grant an extension of time in this case?

[12] I have concluded that the Appeal Division does not have the legal power to grant an extension of time in this case.

[13] Though the Applicant was informed in September 1997 that he could appeal the OCRT's decision to the PAB, the PAB did not exist at the time he filed this request for leave to appeal. Instead, the JGLPA allowed him to file his request with the Tribunal's Appeal Division.⁹ And while the JGLPA protected certain cases from the changes that it introduced, those protections do not apply to this case because the request was filed long after April 1, 2013, meaning that the appeal was never before the PAB.¹⁰

[14] Indeed, the Applicant's representative seems to accept that the DESD Act applies to this appeal, at least in a general way.¹¹ I agree. Based on the terms of the JGLPA, the Federal Court and the Appeal Division have decided that appeals filed after April 1, 2013, should be subject to the DESD Act, including its limitation periods.¹²

[15] Nevertheless, the Applicant's representative argues that no limitation period applies in this particular case because the OCRT's September 1997 decision is a nullity, meaning that it should be treated as though it had never been made. More specifically, the Applicant alleges that the members of the OCRT who decided his case were clearly biased because they ignored a hugely important piece of evidence. He claims that, as a result, the OCRT's decision was not well founded and should be set aside. In support of his arguments, the Applicant relies on the Supreme Court of Canada's decision in *Chandler v Alberta Association of Architects*.¹³

⁸ AD1A.

⁹ JGLPA, s 256.

¹⁰ JGLPA, s 261.

¹¹ AD1A-2.

¹² *Belo-Alves v Canada (Attorney General)*, 2014 FC 1100 at para 79; *Minister of Employment and Social Development v P. F.*, 2017 SSTADIS 476, 2017 CanLII 73273 at paras 46–49.

¹³ *Chandler v Alberta Association of Architects*, [1989] 2 SCR 848.

[16] In my view, the Applicant's representative is putting the cart before the horse. Her arguments speak to the appropriate remedy based on the facts of this case, without first addressing whether I have the jurisdiction to assess the merits of the case at all. Establishing jurisdiction is a preliminary question in every case, and is more difficult when the request for leave to appeal was filed roughly 21 years late.

[17] Critically, in 1997, the CPP provided that the OCRT's decision was final and binding, except for the appeal rights available under the act.¹⁴ If the Applicant was unsatisfied with the OCRT's decision, the CPP provided him with ways to challenge it, but he did not pursue any of those options in a timely way. Rather, he waited for 21 years and is now subject to the terms of the DESD Act, including its one-year limitation period, which I have no power to extend.¹⁵

[18] When viewed through this lens, the Supreme Court of Canada's decision in *Chandler* is of no help to the Applicant. That too is a case about available remedies and does not address jurisdiction in cases where the time for filing a proceeding needs to be extended.

[19] The only unsettled question in my view is whether the one-year limitation period in section 57(2) of the DESD Act started on the day the Applicant received the OCRT's September 1997 decision or on the day when that section came into force. In either case, however, the Applicant's request for leave to appeal was filed over a year late, meaning that an extension of time is simply not possible.

CONCLUSION

[20] While I have great sympathy for the Applicant's position, I must apply the law as it is written and cannot bend the rules based on extenuating circumstances. In this case, I have concluded that I do not have the legal power to grant the extension of time that the Applicant needs for his file to move forward.

¹⁴ CPP, s 84(1) (as it read at the time).

¹⁵ *Fazal v Canada (Attorney General)*, 2016 FC 487 at para 3.

[21] The Applicant's request for an extension of time to apply for leave to appeal is refused.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	Celeste Courville, for the Applicant
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ANNEX

Canada Pension Plan (as it read before April 1, 2013)

Appeal to Pension Appeals Board

83. (1) A party, or subject to the regulations, any person on behalf thereof, or the Minister, if dissatisfied with a decision of a Review Tribunal made under section 82, other than a decision made in respect of an appeal referred to in subsection 28(1) of the *Old Age Security Act*, or under subsection 84(2), may, within ninety days after the day on which that decision was communicated to the party or Minister, or within such longer period as the Chairman or Vice-Chairman of the Pension Appeals Board may either before or after the expiration of those ninety days allow, apply in writing to the Chairman or Vice-Chairman for leave to appeal that decision to the Pension Appeals Board.

[...]

Authority to determine questions of law and fact

84. (1) A Review Tribunal and the Pension Appeals Board have authority to determine any question of law or fact as to

- a) whether any benefit is payable to a person,
- b) the amount of any such benefit,
- c) whether any person is eligible for a division of unadjusted pensionable earnings,
- d) the amount of that division,
- e) whether any person is eligible for an assignment of a contributor's retirement pension,
- f) the amount of that assignment,
- g) whether a penalty should be imposed under this Part, or
- h) the amount of that penalty,

and the decision of a Review Tribunal, except as provided in this Act, or the decision of the Pension Appeals Board, except for judicial review under the *Federal Courts Act*, as the case may be, is final and binding for all purposes of this Act.

Jobs, Growth and Long-term Prosperity Act, SC 2012, c 19

256. An appeal from a decision of a Review Tribunal that could have been appealed to the Pension Appeals Board, but for the repeal of subsection 83(1) of the *Canada Pension Plan* by section 229, may be brought to the Appeal Division of the Social Security Tribunal.

[...]

262. The provisions of the *Canada Pension Plan* and *Old Age Security Act* repealed by this Act, and their related regulations, continue to apply to appeals of which a Review Tribunal or the Pension Appeals Board remains seized under this Act, with any necessary adaptations.

Department of Employment and Social Development Act

Appeal — time limit

57. (1) An application for leave to appeal must be made to the Appeal Division in the prescribed form and manner and within,

- a) in the case of a decision made by the Employment Insurance Section, 30 days after the day on which it is communicated to the appellant; and
- b) in the case of a decision made by the Income Security Section, 90 days after the day on which the decision is communicated to the appellant.

Extension

(2) The Appeal Division may allow further time within which an application for leave to appeal is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant.