



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. H. v Minister of Employment and Social Development*, 2019 SST 1561

Tribunal File Number: GP-18-1055

BETWEEN:

T. H.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Date of decision: May 9, 2019

DECISION

[1] The time for the Claimant to apply for reconsideration of the denial of his *Canada Pension Plan* (CPP) disability application should not be extended.

OVERVIEW

[2] The Minister received the Claimant's application for a CPP disability pension on May 5, 2017.¹ The Claimant stated that he was unable to work because he had a grand mal seizure.² The Minister denied the application on July 12, 2017.³

[3] The Minister did not receive the Claimant's request for reconsideration until March 2, 2018, which was after the 90-day time limit for doing so.⁴ On March 19, 2019, the Minister refused to extend the time for the Claimant to apply for reconsideration.⁵ The Claimant appealed to the Social Security Tribunal.

[4] I determined that I should decide this appeal based on the documents and submissions already filed because:

- A further hearing is not required.
- There are no gaps in the information or need for clarification.

ISSUE

[5] Did the Minister exercise its discretion judicially when it refused to extend the time for the Claimant to request reconsideration?

¹ GD2-4

² GD2-45

³ GD2-10 to 12

⁴ GD2-18

⁵ GD2-19 to 20

ANALYSIS

[6] The Minister's decision to grant or refuse a late reconsideration request is a discretionary one. The Minister must exercised its discretion judicially.⁶

[7] A discretionary power is not exercised judicially if it can be established that the decision-maker:

- acted in bad faith,
- acted for an improper purpose or motive,
- took into account an irrelevant factor,
- ignored a relevant factor, or
- acted in a discriminatory manner.⁷

[8] It is not my role to determine if the Minister made the correct determination. My role is to determine whether it exercised its discretion in a judicial manner. The Claimant has the burden of proof to establish that the Minister failed to do so.

[9] The letter dated July 12, 2017 denying the Claimant's request for a disability pension provided information on what the Claimant should do if he disagreed with the decision: he must ask the Minister in writing to reconsider the decision within 90 days from when he received the letter. An attachment to the letter set out how to ask for reconsideration and provided a telephone number to contact if he had any questions. The attachment also expressly told him that even though he might be waiting for information, he should not wait to send his request for reconsideration and he should tell the Minister in his request that he would send additional information as soon as he got it.⁸

[10] I have assumed the denial letter was sent to the Claimant by mail. Mail in Canada is usually received within 10 days. I therefore find that the reconsideration decision was

⁶ *Canada (A.G.) v Uppal* 2008 FCA 388

⁷ *Canada (A.G.) v. Purcell*, [1996] 1 FCR 644

⁸ GD2-10 to 15

communicated to the Claimant by July 22, 2017. He had until October 24, 2017 to request reconsideration.⁹ The Minister did not receive his request for reconsideration until March 2 2018, which was 223 days after the date the decision was communicated to him.

[11] Because the Minister did not receive the Claimant's request for reconsideration until March 2, 2018, the Minister may only allow a longer period to request the reconsideration if it is satisfied that 1) there is a reasonable explanation for requesting a longer period, and 2) the Claimant has demonstrated a continuing intention to request reconsideration.¹⁰

[12] Both factors must be met.¹¹

[13] In its decision refusing to extend the time for reconsideration, the Minister considered both of these factors.¹²

[14] On March 2, 2018, the Minister wrote to the Claimant advising him that the Minister is allowed to accept a late request under certain circumstances. The letter also advised the Claimant that if he wanted to pursue a late request for reconsideration he needed to provide an explanation for his delay in sending the request, advise how he kept the department informed of his intent to request reconsideration, and explain the reasons he disagreed with the decision.¹³

[15] On March 12, 2018, the Claimant responded that the delay in requesting reconsideration occurred because he did not think he was going to be off work for a long period. He visited a Service Canada location, asked how to request an appeal, and was given instructions on how to do so. He also set out why he disagreed with the decision.¹⁴

[16] The Minister reasonably concluded that the Claimant did not establish a reasonable explanation for the delay or a continuing intention to appeal. There were no exceptional or extenuating circumstances that led to the delay, and there was no documentation on file to show a

⁹ Section 81 of the CPP

¹⁰ Subsection 74.1(3) of the CPP Regulations

¹¹ *Lazure v Attorney General of Canada* 2018 FC 467, paragraph 25

¹² GD2-30 to 31

¹³ GD2-16 to 17

¹⁴ GD2-21

continued intention to appeal between the July 22, 2017 denial letter and March 2, 2018, when the Claimant's late request for reconsideration was received.¹⁵

[17] I found no evidence that the Minister acted in bad faith or acted with an improper purpose or motive. I also found that the Minister did not consider any irrelevant evidence.

[18] I find that the Minister exercised its discretion judicially.

CONCLUSION

[19] The appeal is dismissed

Raymond Raphael
Member, General Division - Income Security

¹⁵ GD2-30 to 31