



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. K. v Minister of Employment and Social Development*, 2019 SST 654

Tribunal File Number: AD-19-307

BETWEEN:

A. K.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Kate Sellar

Date of Decision: July 9, 2019

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] A. K. (Claimant) applied for a *Canada Pension Plan* (CPP) disability pension in November 2015. The Minister denied the application initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division found that the Claimant did not bring the appeal in time, so the case could not proceed.

[3] The Claimant asks the Appeal Division for leave (permission) to appeal the General Division's decision. I must decide whether there is an arguable case that the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) that would justify granting leave to appeal.

[4] There is no arguable case that the General Division made an error. The application for leave to appeal is refused.

PRELIMINARY MATTER

[5] The Claimant included a new medical document along with her application for leave to appeal.¹ The General Division did not have this document when it made the decision.

[6] With some limited exceptions, the Appeal Division does not consider new evidence when deciding whether to grant leave to appeal.² No exception applies in this case. I will not consider the new medical document.

¹ AD1-11 to 13.

² This idea comes from a case called *Parchment v Canada (Attorney General)*, 2017 FC 354.

ISSUE

[7] Is there an arguable case that the General Division member failed to provide a fair process to the Claimant?

ANALYSIS

Reviewing General Division Decisions

[8] The Appeal Division does not give people a chance to re-argue their case in full at a new hearing. Instead, the Appeal Division reviews the General Division's decision to decide whether there are errors. That review is based on the wording of the DESDA, which sets out the grounds of appeal.³

[9] The DESDA says the General Division makes an error when it fails to observe a principle of natural justice, or otherwise acts beyond or refuses to exercise its jurisdiction.⁴

[10] The principles of natural justice are about the fairness of the process, not the fairness of the outcome. A decision in which the process was unfair may be one in which the General Division failed to observe the principles of natural justice. What fairness requires will depend on the circumstances of the case.⁵ The General Division only has the powers that are set out in law. If the General Division member decides something that they do not have the authority to decide, that is acting beyond jurisdiction. If the General Division fails to make a decision that it was required to make, that is refusing to exercise jurisdiction.

[11] At the leave to appeal stage, a claimant has to show that the appeal has a reasonable chance of success.⁶ A claimant needs to show only that there is some arguable ground on which the appeal might succeed.⁷ This is a low test to meet.

Late Appeals to the General Division

³ DESDA, s 58(1).

⁴ DESDA, s 58(a).

⁵ The key case about fairness of the process from the Supreme Court of Canada is *Baker v Canada (Citizenship and Immigration)*, 1999 CanLII 699 (SCC)

⁶ DESDA, s 58(2).

⁷ This idea comes from a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[12] The claimant makes an appeal to the General Division within the 90 days of when the Minister communicates the decision to the claimant.⁸ The General Division can allow further time to appeal. However, **in no case** can the claimant bring the appeal more than one year after the day on which the Minister communicates the decision to claimant.⁹

Is there an arguable case that the General Division failed to provide a fair process to the Claimant?

[13] There is no arguable case that the General Division failed to provide the Claimant with a fair process.

[14] The Claimant argues that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.¹⁰ She states that the General Division should have granted her the extension. She explains that she has since changed the dosage on her psychiatric medications. She explains that she was not able to handle stressful situations when the appeal to the General Division was due.

[15] The Minister's decision on reconsideration is dated October 13, 2016.¹¹ The Tribunal received the Claimant's appeal on January 10, 2019.¹² The General Division acknowledged the Claimant's argument that she was dealing with many mental health disability and was not mentally capable of appealing sooner. However, the General Division decided that it did not have the power to ignore or change the law. The law states that **in no case** can an appeal be brought more than a year after the reconsideration decision was communicated to the Claimant.¹³

[16] The Claimant has not shown that her appeal of the General Division's decision has a reasonable chance of success. The Claimant has not provided any argument about how the General Division failed to provide a fair process, or made an error about what it can decide.

⁸ DESDA, s 52(1)(c).

⁹ DESDA, s 52(1)(b).

¹⁰ AD1-2.

¹¹ GD2-8.

¹² GD1-1.

¹³ General Division decision, para 9.

[17] The Claimant's argument is not really about the fairness of the process, but it might be about the fairness of the outcome. It seems that the Claimant is really challenging whether the General Division member was correct in deciding that they could not grant an extension.

[18] Although the General Division member did not grant an extension, she did provide a fair process. The General Division member decided only what they have the power to decide—no more and no less. The General Division member did not have the power to grant an extension beyond the one-year mark, and therefore refused to do so.

[19] The Claimant must provide all evidence and arguments needed for a successful application for leave to appeal.¹⁴ However, I have reviewed the record from the General Division level.¹⁵ I am satisfied that the General Division did not ignore or misconstrue the evidence.

CONCLUSION

[20] The application for leave to appeal is refused.

Kate Sellar
Member, Appeal Division

REPRESENTATIVE:	A. K., self-represented
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¹⁴ This principle is in a case called *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

¹⁵ Reviewing the record this way is consistent with the Federal Court decision in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.