



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *E. L. v Minister of Employment and Social Development*, 2019 SST 1517

Tribunal File Number: GP-19-354

BETWEEN:

E. L.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Antoinette Cardillo

DATE OF DECISION: July 30, 2019

DECISION

I find that the Respondent exercised its discretion judicially for the reasons stated below.

OVERVIEW

[1] The Respondent received the Appellant's application for a disability pension on April 8, 2016.¹ The Respondent denied the application on October 6, 2016.² The Appellant requested reconsideration on November 13, 2018,³ and the Respondent denied the request for reconsideration on December 5, 2018, because the Appellant had submitted it after the 90-day time limit.⁴ On January 18, 2019,⁵ the Appellant appealed the decision concerning the refusal to grant an extension of time to file a reconsideration request with the Social Security Tribunal.

THE LAW

[2] After being notified of the Respondent's refusal to grant a disability pension, a person has 90 days⁶ to request a reconsideration of that decision. The Respondent may, before or after the expiration of the 90-day time limit, decide to grant the claimant an extension of time to file a proper request for reconsideration.

[3] The Respondent⁷ may allow a longer period to make a request for reconsideration if it is satisfied of the following: There is a reasonable explanation for requesting a longer period, and the person has demonstrated a continuing intention to request a reconsideration.

[4] The Respondent⁸ must also be satisfied that the request for reconsideration has a reasonable chance of success and that no prejudice would be caused to the Respondent or any

¹ GD2-4.

² GD2-14.

³ GD2-28.

⁴ GD1-41.

⁵ GD1-2.

⁶ CPP, s 81.

⁷ CPP Regulations, s 74.1(3).

⁸ CPP Regulations, s 74.1(4)(a).

other party by allowing a longer period to make the request, if the request for reconsideration is made after the 365-day period after written notice of the decision.

ISSUE

[5] I must determine whether the Respondent exercised its discretion judicially when it refused to grant the Appellant extra time to make a request for reconsideration of the October 6, 2016, decision.

ANALYSIS

[6] The Minister's decision to grant or refuse a late reconsideration request is considered a discretionary decision. The Minister must exercise its discretion judicially or judiciously.⁹

[7] Discretionary power is not exercised "judicially" if the decision-maker:¹⁰

- 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.

[8] I must determine not whether the Respondent made the right decision, but rather whether it exercised its discretion judicially. The Appellant has the burden of proving that the Respondent did not exercise its discretion properly.

[9] The evidence on file shows that the Appellant did not contact the Respondent following the October 6, 2016, decision. As a result, the evidence on file does not demonstrate there being a continuing intention to request a reconsideration of the October 2016 decision.

[10] In addition, the Appellant did not provide a reasonable explanation for requesting an extension. Even though the Appellant stated that he was waiting for his doctor's medical report

⁹ *Canada (Attorney General) v Uppal*, 2008 FCA 388.

¹⁰ *Canada (Attorney General) v Purcell*, [1995] 3558 (FCA) and [1996] 1 FC 644.

and that he asked his doctor several times to provide it, he could have requested reconsideration during the 90-day period while he waited for the information from his doctor.

[11] Because the request for reconsideration was made after the 365-day period following written notice of the decision that no benefit could be paid, the Respondent had to be satisfied that the request for reconsideration had a reasonable chance of success and that no prejudice would be caused to the Respondent or any other party by allowing a longer period to make the request. The evidence on file shows that the Respondent considered whether the appeal had a reasonable chance of success and concluded that there was a reasonable chance of success because the Appellant had provided new documents. It also considered the prejudice to the parties and found that allowing a longer period would not result in prejudice.

[12] Based on the evidence on file, I find that the Respondent did not act in bad faith, did not act for an improper purpose or motive, did not take into account an irrelevant factor, did not ignore a relevant factor, and did not act in a discriminatory manner. The Respondent considered the fact that the Appellant had not contacted the Respondent between the time of the October 2016 initial decision and the November 2018 request for reconsideration. Therefore, the Appellant did not have a continuing intention to request a reconsideration of the Respondent's decision. The Respondent also considered the fact that the Appellant has not given a reasonable explanation for requesting reconsideration after the 90-day time limit. The Respondent also considered whether the appeal had a reasonable chance of success and whether allowing a longer period would result in prejudice.

[13] The Respondent had to assess four factors to determine whether to grant or refuse the Appellant's late reconsideration request under the CPP. As outlined, I must determine not whether the Respondent made the right decision, but rather whether it exercised its discretion judicially. After reviewing all the evidence on file, I find that the Respondent considered the four factors under the CPP and that, in doing so, it exercised its discretion properly.

CONCLUSION

[14] The appeal is dismissed.

Antoinette Cardillo
Member, General Division – Income Security