



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. A. v Minister of Employment and Social Development*, 2019 SST 919

Tribunal File Number: AD-19-578

BETWEEN:

**A. A.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Decision on Request for Extension of Time    Kate Sellar  
by:

Date of Decision:    August 29, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] A. A. (Claimant) has bilateral moderately severe osteoarthritis. He has limitations in terms of walking and standing. In August 2011, he started receiving a retirement pension under the *Canada Pension Plan* (CPP). In 2017, he applied for a disability pension under the CPP. The Minister denied his application for the disability pension initially and on reconsideration. The Minister explained that a Claimant cannot start a CPP disability pension 15 months or more after receiving the CPP retirement pension. The Claimant filed a late appeal to the General Division of this Tribunal.

[3] On November 27, 2017, the General Division refused to give the Claimant an extension of time for his appeal. The Claimant filed an application for leave to appeal the General Division's decision on August 21, 2019.

[4] The Appeal Division must decide whether the application for leave to appeal is late, and if it is, whether the Appeal Division can consider giving the Claimant an extension of time.

[5] I find that the application is more than one year late, so the Appeal Division cannot consider giving an extension of time. An extension of time to apply for leave to appeal is refused.

### **ISSUE**

[6] Is the application for leave to appeal late? If it is late, can the Appeal Division consider giving the Claimant an extension of time?

### **ANALYSIS**

[7] The *Department of Employment and Social Development Act* (DESDA) states that an application for leave to appeal must be made to the Appeal Division within 90 days after the day

on which the decision was communicated to the applicant.<sup>1</sup> The Appeal Division may allow further time to make an application for leave to appeal. However, an applicant may not, in any case, make an application more than a year after the day on which the decision is communicated to the applicant.<sup>2</sup> A decision by the General Division is deemed to have been received 10 calendar days after the Tribunal mails it.<sup>3</sup>

**Is the application for leave to appeal late? If it is late, can the Appeal Division considering giving the Claimant an extension of time?**

[8] The application for leave to appeal is late. The Appeal Division does not have the discretion to grant an extension of time. The Claimant filed the application for leave to appeal more than one year after the day on which the decision was deemed communicated to him.

[9] The General Division decision is dated November 27, 2017. It appears that the Tribunal sent the General Division decision to the Claimant by regular mail on December 8, 2017 (the cover letter is dated December 8, 2017). There is no evidence that the Tribunal's mailing was returned to it by Canada Post. In the information the Claimant provided about why he was late, he did not state that there was any delay in receiving the decision from the Tribunal.

[10] The Claimant is deemed to have received the General Division decision 10 days after the day the Tribunal mailed it. I find that the decision was mailed on December 8, 2017, and therefore I deem the Claimant to have received it on December 18, 2017.

[11] The Tribunal received the application for leave to appeal from the Claimant on August 21, 2019. The Claimant filed the application for leave to appeal long after the 90-day mark, and long after the one year limit I described above.

[12] The law is clear: in no case may an application be made more than a year after the Tribunal communicates the General Division's decision to the Claimant. I find that I cannot consider extending the time past that one-year limit for the Claimant.

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<sup>1</sup> DESDA, s 57(1)(b).

<sup>2</sup> DESDA, s 57(2).

<sup>3</sup> *Social Security Tribunal Regulations*, s 19(1)(a).

## CONCLUSION

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

Kate Sellar  
Member, Appeal Division

REPRESENTATIVE:	A. A., self-represented
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