



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. L. v Minister of Employment and Social Development*, 2019 SST 1497

Tribunal File Number: GP-19-1735

BETWEEN:

J. L.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Angela Ryan Bourgeois

DATE OF DECISION: December 13, 2019

Reasons and Decision

My decision

[1] I grant an extension of time for the Claimant to file his appeal with the Tribunal. The reasons for my decision are below.

What has happened so far

[2] The Appellant in this matter is J. L. In this decision, I will call him the **Claimant**.

[3] The Claimant applied for and received a disability pension under the *Canada Pension Plan*.

[4] Following a review of his file, the Minister of Employment and Social Development, the Respondent in this matter, decided the Claimant's disability had ended in December 2007. The Minister stopped the Claimant's disability payments in September 2013.

[5] In October 2014, the Minister sent the Claimant a letter explaining its decision and the amount the Claimant had to repay for the benefits he received between 2008 and September 2013.

[6] In December 2014, the Claimant asked the Minister to reconsider its decision.

[7] The Minister provided the Tribunal with a copy of a reconsideration decision letter dated February 16, 2015. I will call the reconsideration decision the **Decision**, and the reconsideration decision letter, the **Letter**.

[8] The Claimant says he didn't receive the Letter until 2019. Since he didn't hear from the Minister after he asked for a reconsideration, he thought the Minister had decided in his favour. He only found out about the negative decision in May 2019 when he received a bill from the Minister for over \$76,000. After receiving the bill, he called Service Canada, who sent him a letter dated May 27, 2019, which included a copy of the Letter.

Why time limits are so important

[9] When the Claimant received the Letter is most important to my decision because claimants only have 90 days from when the reconsideration decision is communicated to them to appeal to the Tribunal. I will call the day the decision is communicated to the claimant the **Communication Date**.

[10] I can grant an extension of time to appeal, but only when the claimant files the appeal within one year from the Communication Date.¹

[11] The Claimant filed his appeal in 2019, and the Letter is dated 2015. If the Decision was communicated to him in 2015, for example, if he received the Letter in 2015, his appeal can go no further. This is because the appeal would have been filed outside the one-year time limit. I can't extend the time limit if the appeal is filed outside the one-year time limit.

What I have to decide

[12] I have to answer these questions:

- a) When was the Decision communicated to the Claimant?²
- b) When was the appeal filed with the Tribunal?
- c) Was the appeal filed within one year from the Communication Date?
- d) Was the appeal filed within 90 days from the Communication Date?
- e) If the appeal was filed outside the 90-day time limit, should I grant an extension of time?

When was the Decision communicated to the Claimant?

¹ S 52 of the *Department of Employment and Social Development Act* sets out the 90-day and 1-year time limits.

² This is the Communication Date.

[13] I find the Decision was communicated to the Claimant on June 6, 2019, when he received the May 27, 2019 letter from the Minister which enclosed the Letter. My reasons are below.

[14] I find the Letter was not sent to the Claimant in 2015 because:

- a) The Letter is still in draft form, and as such, I find it was not mailed to the Claimant at the time. The Minister provided a copy of the same Letter to the Claimant and the Tribunal. The Letter has underlined words and sections. The underlining seems to indicate where the writer had to add information to the standard form letter. The underlining includes information unique to the Claimant, such as his identification number, and dates. The letter also has words and parts of sentences struck out. The underlining and struck out text is evidence that the letter is in draft, not final, form. The Letter contains a signature, but given the other indications of it being in draft form, I still find the Letter was not sent in 2015.
- b) The address on the Letter is not an address shown on the 2015 Address History report provided by the Minister. The Minister used a different address (one on the Address History report) when it wrote to the Claimant in May 2015. The Letter shows the Claimant's current address. Since the evidence shows the Minister did not have this address in 2015, I find that the letter was not sent in 2015.
- c) In May 2015, the Minister notified the Claimant that a decision hadn't been made yet. A May 2015 letter from the Minister says that it received the Claimant's reconsideration request, and it would notify him when it made a decision or if it needed more information. This letter suggests that in May 2015, the Letter had not yet been sent to the Claimant. If the Letter had been sent, the May 2015 letter would not have said that a decision was pending.
- d) The Claimant says he didn't receive the Letter and was not otherwise notified of the decision until May 2019.

- e) The Claimant was timely with his responses to the Minister's letters in 2013 and 2014, so it is more likely than not that he would have promptly responded to the Letter in 2015, had he received it.
- f) The Claimant showed that he kept good records when he provided the Tribunal with documents dating to 2013. As such, it seems likely that he would have also kept the Letter, had he received it. If he had the Letter, he would not have asked for it in May 2019.

[15] I find the Decision was first communicated to the Claimant when he received the May 27, 2019 letter from Service Canada with the Letter enclosed because:

- a) There is no evidence that the Minister communicated the Decision to the Claimant by any means other than the Letter. For example, there are no records of telephone calls or emails to suggest that the Decision was communicated by these means.
- b) There is no evidence the Claimant was aware of the Minister's decision before May 2019.

[16] Since mail in Canada is usually delivered within 10 days of its posting, I find the Claimant received the May 27, 2019 letter with the enclosed Letter on June 6, 2019. This is 10 days from May 27, 2019.

[17] I will make two further comments, before addressing the remaining questions:

- a) The Minister didn't provide any written submissions on when the Decision was communicated to the Claimant.
- b) Based on the reconsideration worksheets, signed and dated in February 2015, there is no doubt the reconsideration decision was actually made in 2015. Unfortunately, no one notified the Claimant of the Decision until 2019.

When was the appeal filed with the Tribunal?

[18] I find the Claimant's appeal was filed with the Tribunal on October 24, 2019. This is the receipt date stamped on the Claimant's appeal documents by the Tribunal.

Was the appeal filed within one year from June 6, 2019, the Communication Date?

[19] Since the Decision was communicated in June 2019, and the appeal was filed in October 2019, the appeal was filed within the one-year time limit.

Was the appeal filed within 90 days from June 6, 2019, the Communication Date?

[20] No. The appeal was not filed on time.

[21] Since the Decision was communicated to the Claimant on June 6, 2019, he had until September 4, 2019, to file his appeal. He filed his appeal on October 24, 2019, which is outside the 90-day time limit.

Should an extension of time to file the appeal be granted?

[22] Yes. An extension of time to file the appeal is granted.

[23] In deciding whether to allow further time to appeal, I have to decide what would best serve the interests of justice and consider the following four factors:³

- a) whether the Claimant showed a continuing intention to pursue an appeal;
- b) whether there is an arguable case;
- c) whether there is a reasonable explanation for the delay; and,
- d) whether the extension will prejudice the Minister.⁴

³ These two cases confirm this approach: *Canada (Attorney General) v Larkman*, 2012 FCA 204, and *Jama v Canada (Attorney General)*, 2016 FC 1290.

⁴ These are the factors set out by the Federal Court of Appeal in *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883.

[24] Firstly, I find the Claimant had a **continuing intention** to pursue the appeal. When he received the bill from the Minister in May 2019, he immediately contacted Service Canada and obtained a copy of the Decision. He then prepared a lengthy letter of appeal, with several enclosures, and sent it to Service Canada, all within the 90-day appeal period. Although it was a mistake to send his appeal to Service Canada, his actions show that he had a continuing intention to appeal the Decision.

[25] Secondly, I find the Claimant has presented an **arguable case**. The Minister has to prove that the Appellant stopped being disabled. The Claimant says he continued to meet the test for disability after December 2007 and provided medical evidence.⁵ This means that he has presented an arguable case.

[26] Thirdly, I find the Claimant has a **reasonable explanation** for the delay in filing his appeal because the appeal would have been filed on time if the Claimant had not sent it to Service Canada first. Given the lengthy delay in his reconsideration process, it is understandable the Claimant did not realize what his next steps were in the appeal process.

[27] Fourthly, I find the Minister, the only other party to this appeal, would **not be prejudiced** if an extension was allowed. Since the Minister took more than four years to notify the Claimant of the Decision, a short delay on the Claimant's part in filing his appeal will not unduly prejudice the Minister.

[28] Lastly, in the **interests of justice**, I considered (i) the length of the Appellant's delay in filing his appeal, which was less than two months, and (ii) that his appeal would have been filed on time if he had not made the mistake of sending it to Service Canada. Given these factors, I find it is in the interests of justice that the Claimant be permitted to bring his appeal to the Tribunal.

⁵ The Claimant says this in his letter to the Tribunal at page GD1-1.

[29] Since the Claimant has satisfied all four factors, and it is in the interests of justice that he be allowed to proceed with his appeal, I have decided to give the Claimant an extension of time to file his appeal.

What this means

[30] I grant an extension of time to appeal. This means the Claimant's appeal can proceed.

Angela Ryan Bourgeois
Member, General Division - Income Security