



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. R. v Minister of Employment and Social Development*, 2019 SST 1473

Tribunal File Number: AD-19-819

BETWEEN:

**A. R.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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

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Rescind or Amend Decision by: Janet Lew

Date of Decision: December 30, 2019

## DECISION AND REASONS

### DECISION

[1] The application to rescind or amend is refused.

### OVERVIEW

[2] The Applicant, A. R., is seeking to rescind or amend a decision of the Pension Appeals Board dated January 22, 2013.<sup>1</sup> The application is being brought under subsection 66(2) of the *Department of Employment and Social Development Act* (DESDA).

[3] The Pension Appeals Board refused the Applicant's application for leave to appeal the Review Tribunal's decision of October 30, 2012.<sup>2</sup> The Review Tribunal had dismissed the Applicant's appeal for Canada Pension Plan disability benefits.

[4] The Applicant has additional medical evidence that neither the Review Tribunal nor the Pension Appeals Board had. The Applicant argues that this evidence establishes that she has had a severe and prolonged disability since 1989. She argues that if the Pension Appeals Board had this evidence, it would have granted her leave to appeal and, after that, disability benefits. Ultimately, she wants me to assess all of the medical evidence and grant her disability benefits.

[5] In deciding whether to rescind or amend the Pension Appeals Board decision, the Applicant must meet the requirements under section 66 of the DESDA. The Applicant has not met the requirements under section 66 of the DESDA, so I am refusing her application to rescind or amend.

### ISSUE

[6] The issue before me is as follows:

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<sup>1</sup> See Pension Appeals Board decision at RA1-37 to RA1-39.

<sup>2</sup> Leave to appeal is the first step of the appeals process. An applicant has to get permission to move on to the second and final stage of the appeals process. An applicant has to raise an arguable case.

Did the Applicant file her application to rescind or amend on time? If not, do I have any discretion to extend the time for filing?

## **ANALYSIS**

[7] Under subsection 84(2) of the *Canada Pension Plan*, the Pension Appeals Board could rescind or amend its decision, on new facts. Applicants did not face any time limits when they had to apply to rescind or amend a decision under subsection 84(2) of the *Canada Pension Plan*.

[8] The *Jobs, Growth and Long-term Prosperity Act*, S.C. 2012, c. 19 (JGLPA) repealed subsection 84(2) of the *Canada Pension Plan*. Under the JGLPA, the Pension Appeals Board effectively ceased to operate after April 1, 2014, as members of the Pension Appeals Board held office only until April 1, 2014.<sup>3</sup>

[9] The DESDA came into force and effect on April 1, 2013. It established the Social Security Tribunal, consisting of a General Division and an Appeal Division.

[10] Under subsection 261(2)(b) of the JGLPA, an application made under section 66 of the DESDA after March 31, 2013 is deemed to relate to a decision made by the Appeal Division of the Social Security, in the case of a decision made by the Pension Appeals Board.

[11] Under subsection 66(2) of the DESDA, an application to rescind or amend a decision “must be made within one year after the day on which a decision is communicated.”

[12] The Pension Appeals Board made its decision on January 22, 2013.

[13] The Applicant filed her application to rescind or amend on November 22, 2019—more than 6.5 years after the Pension Appeals Board made its decision.

[14] Previously, I considered whether the one-year deadline under subsection 66(2) of the DESDA should apply to decisions that had been communicated to parties before April 1, 2013. I determined that by virtue of the deeming provisions under subsection 261(2)(b) of the JGLPA, subsection 66(2) of the DESDA was intended to apply also to decisions made by the Pension

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<sup>3</sup> See subsection 254(1) of the JGLPA.

Appeals Board.<sup>4</sup> This lent consistency, certainty and finality to the disability claims process. In other words, I determined that a one-year deadline applies to all applications made under section 66 of the DESDA. This would have required the Claimant to file an application to rescind or amend by no later than January 22, 2014.

[15] The Appeal Division did not exist until April 1, 2013. Under the deeming provisions under subsection 261(2)(b) of the JGLPA, possibly a Pension Appeals Board decision could have been deemed to have been made on April 1, 2013. In such cases, applicants might have been able to legitimately claim that the one-year deadline should start to run from April 1, 2013. However, even if this interpretation of subsection 261(2)(b) of the JGLPA could be made, it would not have helped the Applicant because she filed her application years later—in 2019.

[16] The Applicant acknowledges that her application is late. She had all of the medical evidence, but she explains that she relied on her legal representative at the time to present her case. She says that her previous legal representative was negligent in representing her. Because of her representative's negligence, she is asking me to grant her request to amend or rescind the Pension Appeals Board decision.

[17] Unfortunately for the Applicant, she is now well out of time to file an application to rescind or amend. Her previous legal representative's alleged negligence is of no relevance. Under subsection 66(2) of the DESDA, the Applicant had to file her application within one year after the day when she received the decision.

[18] There are no provisions under the DESDA that give me any discretion to extend the time for filing a rescind or amend application.

[19] Additionally, even if the Applicant had filed her application to rescind or amend on time, she would have had to show that the new evidence was (1) material and (2) that it could not have been discovered at the time of the hearing (before the Pension Appeals Board) with the exercise of reasonable diligence. The Applicant says that her legal representative at the time was simply negligent in failing to produce the records, but by this, she is readily acknowledging that much of

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<sup>4</sup> See *C.D. v. Minister of Employment and Social Development*, 2015 SSTAD 1193.

the information had been available. She would not have met the second requirement under subsection 66(1)(b) of the DESDA.

[20] Under subsection 66(1)(b) of the DESDA, the Applicant would have also had to show that the new evidence was material to the leave to appeal application. But, at the Appeal Division, the Applicant faces a different set of requirements at the leave to appeal stage to show that she had an arguable case.

[21] Formerly, an applicant would be raising an arguable case before the Pension Appeals Board if they put forward new or additional evidence that the Review Tribunal had not already considered.

[22] Unlike the Pension Appeals Board, new evidence is no longer accepted as an arguable case at the Appeal Division. In other words, the Applicant's medical evidence is no longer considered material to the leave to appeal application. Put another way, new evidence is no longer a ground of appeal. The grounds of appeal are limited to the types of errors under subsection 58(1) of the DESDA. The Claimant would not have met the first requirement under subsection 66(1)(b) of the DESDA in any event because she would have been unable to show that the medical evidence was material to the leave to appeal application.

[23] In short, even if the Applicant had filed her application to rescind or amend on time, I would have refused her application for leave to appeal.

[24] As a footnote, the Applicant should have filed her application to rescind or amend with the General Division, as it would have been an application to rescind or amend the Review Tribunal's decision. However, such an application would have also been brought out of time.

## **CONCLUSION**

[25] The Applicant is out of time to make an application to rescind or amend the Pension Appeals Board's decision. The application to rescind or amend is refused.

Janet Lew  
Member, Appeal Division

REPRESENTATIVE:	Palma M. Pallante (paralegal), Representative for the Applicant
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