



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. T. v Minister of Employment and Social Development*, 2020 SST 254

Tribunal File Number: GP-19-1397

BETWEEN:

C. T.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Connie Dyck

Teleconference hearing on: January 13, 2020

Date of decision: January 15, 2020

DECISION

[1] The Claimant, C. T., cannot have a longer period to request reconsideration of the decision to deny his application for a *Canada Pension Plan* (CPP) disability pension.

OVERVIEW

[2] The Claimant applied for a CPP disability pension in May 2018. The Minister of Employment and Social Development (the Minister) denied the application and notified the Claimant in a letter dated October 10, 2018.¹

[3] A person whose CPP disability application has been denied can ask the Minister to reconsider it. The request has to be made within 90 days.² The Claimant was advised of his appeal rights in the October 10, 2018 letter.

[4] The Claimant did eventually request reconsideration of the October 2018 decision. The Minister received the request on May 8, 2019, which is 210 days after the date of the decision. The Minister denied the request because it was late and well past the 90-day deadline.

[5] The Minister can extend the time for a person to request reconsideration, but decided not to in this case. That is what this appeal is about.

[6] The Minister has the authority to extend the time to request reconsideration. This is called a ``discretionary`` power. I do not have discretionary powers. But, a discretionary power must be exercised in a judicial manner.³ I must be sure that the Minister did this.

[7] A discretionary power is not exercised in a judicial manner if the decision-maker:

- acted in bad faith,
- acted for an improper purpose or motive,
- took into account an irrelevant factor,

¹ The decision is at GD 2-11

² Subsection 81(1) *Canada Pension Plan*

³ This is explained in a decision called *Panopoulos v. Canada (Attorney General)*, 2010 FC 877; *Canada (A.G.) v. Uppal*, 2008 FCA 388

- ignored a relevant factor, or acted in a discriminatory manner.⁴

⁴ *Canada (A.G.) v. Purcell*, [1996] 1 FCR 644

THE ISSUE IN THIS APPEAL

[8] At this stage it is not my job to decide if the Claimant should get a disability pension. I am only concerned with the Minister's decision not to give him more time to request reconsideration of the decision to deny his disability application. I have to decide if the Minister exercised its discretion judicially when it refused to extend the time.

ANALYSIS

[9] The Minister advised the Claimant of the decision to deny the application as well as his appeal rights, in a telephone call on October 10, 2018. The Claimant said he did not receive the denial letter until October 31, 2018. He had 90 days from that date – until January 30, 2019 - to request reconsideration. His request was written on May 8, 2019. It was clearly more than 90 days late. The Claimant did not dispute this.

[10] The Minister could only extend the time for the Claimant to request reconsideration if the Minister was satisfied of two things:

1. The Claimant demonstrated a continuing intention to request a reconsideration. **and**
2. There was a reasonable explanation for requesting a longer period.⁵

[11] To grant the extension the Minister has to be satisfied **both** requirements are met.⁶ In the Claimant's case, the Minister decided neither of them was.

[12] I am not supposed to decide if the Minister's decision is correct, or if I agree with it. I can only decide if the Minister made the decision in a judicial manner. The Claimant has to prove the Minister did not.

⁵ Subsection 81(1) *Canada Pension Plan*; subsection 74.1(3) *Canada Pension Plan Regulations*

⁶ *Lazure v Attorney General of Canada*, 2018 FC 467

i) was there a continuing intention to request reconsideration

[13] The Minister said that the Claimant did not show a continuing intention to request reconsideration. The Minister reviewed the Claimant's file and computer records, and confirmed there was no contact during the appeal period – that is, from October 10, 2018 to January 31, 2019. In fact, there had been no contact made by the Claimant until April 23, 2019.

[14] The Claimant told the Minister that he did not request a reconsideration during the 90-day appeal period because he had upcoming physician appointments and his medication was recently changed. The Claimant told me that he was aware that his appeal deadline was in January 2019. However, he felt he needed more medical information before he could ask for reconsideration. His doctor is in Thompson, which is about 40 miles away by train. He saw his family doctor on January 9, 2019 and an application for a disability parking permit was completed. He said he received this parking permit on January 24, 2019. However, he did not request a reconsideration at this time because he did not know how much “weight” a parking pass would carry. He saw his doctor again on January 22, 2019 and a Disability Tax Credit form was completed. Again, the Claimant did not advise the Minister of this. He said that he did not know that he should. However, along with the October 2018 decision was a detailed form entitled “How to Ask for CPP to Reconsider its Decision”. This form clearly says, “Important note: Even though you may be waiting for information, please do not wait to send your request for CPP to reconsider its decision. Tell us in your request that you will send additional information as soon as you get it.” However, the Claimant did not do this. He only contacted the Minister on April 23, 2019 after he received his Disability Tax Credit and his condition had not improved after the new drug treatment.

[15] The Minister determined that the Claimant has not demonstrated a continuing intention to request a reconsideration. There is no evidence of bad faith or with an improper motive. There is also no evidence that the Minister considered an irrelevant factor or ignored a relevant factor. I also find no evidence that the Minister acted in a discriminatory manner. Therefore, I must find that the Minister did exercise its discretion judicially when it found that the Claimant did not have a continuing intention to request reconsideration.

ii) was there a reasonable explanation for delay

[16] The Minister then decided the Claimant did not provide a reasonable explanation for the delay in asking for a reconsideration of the decision. The Minister based its decision on the Claimant's statement and on its own records. The Minister considered that the Claimant said he had future medical appointments and medication changes implemented.⁷ The Claimant said he had an appointment in November 2018 with a rheumatologist. After this appointment, more tests and vaccinations were required to determine if a change in the treatment plan was necessary. A change in the treatment plan was made in February 2019. The Minister said this did not constitute a reasonable explanation for a delay in seeking reconsideration. The Claimant had been provided with his appeal rights which again, clearly said to not wait for additional information before sending in a reconsideration request.

[17] The Minister decided none of this information gave a reasonable explanation for the delay because it did not show a reasonable explanation for the delay or exceptional or extenuating circumstances.⁸ "Exceptional or extenuating circumstances" is a much stricter test than the law requires. In requiring the Claimant to show exceptional or extenuating circumstances rather than a reasonable explanation, the Minister took irrelevant factors into account. However, that does not change the outcome of my decision.

[18] To extend the time to request reconsideration the Minister had to find there was a reasonable explanation for the Claimant's delay **and** that the Claimant demonstrated a continuing intention to request reconsideration. Because the Minister's decision that there was no continuing intention was made in a judicial manner, it does not matter that its decision about whether there was a reasonable explanation was flawed.

⁷ The Claimant's explanation is at GD 2-7

⁸ The Minister's argument is at GD 3-5

CONCLUSION

[19] Since I find that the Minister exercised its discretion judicially in deciding the Claimant did not have a continuing intention to request reconsideration, I must dismiss the appeal.

Connie Dyck
Member, General Division - Income Security