



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. T. v Minister of Employment and Social Development*, 2020 SST 330

Tribunal File Number: GP-19-1916

BETWEEN:

**J. T.**

Appellant

and

**Minister of Employment and Social Development**

Minister

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

---

Decision by: Patrick O'Neil

Date of decision: February 1, 2020

## DECISION

[1] The Appellant is not entitled to an extension of time to request a reconsideration of the Minister's decision dated July 11, 2018 that denied her application for a *Canada Pension Plan* (CPP) disability pension.

## OVERVIEW

[2] The Minister received the Appellant's application for a disability pension on May 30, 2018<sup>1</sup>. The Minister denied the application on July 11, 2018<sup>2</sup>. On June 24, 2019, the Appellant requested the Minister reconsider the July 11, 2018 decision<sup>3</sup>. On October 3, 2019, the Minister denied her request for a reconsideration<sup>4</sup>. The Appellant appealed the Minister's decision to deny her request for a reconsideration to the Social Security Tribunal (Tribunal).

[3] I decided this appeal based on the documents and submissions filed, in other words, it was decided on the record. I determined I did not require any additional evidence to make my decision, as all relevant evidence in the file was clear and non-contradictory. I made my decision after my review of all documentation and submissions contained in the file.

[4] A person who is dissatisfied with a decision to deny a CPP disability pension, may, within ninety days after the day the person is notified in writing of the decision, or within such longer period that the Minister may allow, make a request for a reconsideration of that decision<sup>5</sup>.

[5] The Minister may allow a longer period to make a request for reconsideration of a decision if the Minister is satisfied that there is a reasonable explanation for requesting a longer period, and the person has demonstrated a continuing intention to request a reconsideration<sup>6</sup>. Each criterion must be considered by the Minister, and the Minister must be satisfied that each criterion has been met<sup>7</sup>.

---

<sup>1</sup>GD2 pages 28-31

<sup>2</sup> GD2 pages 22-24

<sup>3</sup> GD2 pages 2-4

<sup>4</sup> GD2 pages 4-5

<sup>5</sup> Section 81(1) CPP

<sup>6</sup> Subsection 74.1(3) CPP Regulations

<sup>7</sup> *Lazure v. Attorney General of Canada* 2018 F.C. 467

[6] A person who is dissatisfied with a decision of the Minister in relation to further time to make a request for reconsideration may appeal the decision to the Tribunal<sup>8</sup>.

[7] The Minister's decision to grant or refuse a late reconsideration request is considered a discretionary decision. Case law indicates the Minister's discretion must be exercised judicially<sup>9</sup>.

### **ISSUE(S)**

[8] Did the Minister exercise his discretion judicially when he refused to allow the Appellant a longer period to request a reconsideration?

### **ANALYSIS**

[9] I must determine if the Minister exercised his discretion judicially in refusing the Appellant's late reconsideration request. A discretionary power is not exercised "judicially" if it can be established that the decision-maker: 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<sup>10</sup>.

[10] I assume the Minister's decision dated July 11, 2018, was sent to the Appellant by mail. I take judicial notice of the fact that mail in Canada is usually delivered to the addressee within 10 days of mailing. I therefore find it reasonable to conclude the decision was communicated to the Appellant by July 21, 2018. Ninety days after July 21, 2018 is October 19, 2018.

[11] The Minister advised the Appellant in the decision letter dated July 11, 2018, of her right to request a reconsideration, and the requirement to make such request within ninety days of receipt of the decision. The decision letter noted the toll free telephone number she can call if she has questions regarding her right to request reconsideration of the decision. Enclosed with the decision letter was a document entitled "How to Ask CPP to Reconsider Its Decision"<sup>11</sup>. The Minister received the Appellant's request for reconsideration on June 24, 2019, almost one year

---

<sup>8</sup> Section 82 CPP

<sup>9</sup> Canada (A.G.) v. Uppal 2008 FCA 388

<sup>10</sup> Canada (A.G.) v. Purcell [1996] 1 F.C. 644

<sup>11</sup> GD2 pages 25-26

(338 days) after her receipt of the decision dated July 11, 2018. I find the Appellant made her request for reconsideration outside the October 19, 2018 required ninety-day limit.

[12] Following receipt of the Appellant's request for a reconsideration, on September 5, 2019, the Minister advised the Appellant the legislation permits him to consider a late request for reconsideration if provided a reasonable explanation for the delay in making the request, and a continuing intention to request a reconsideration<sup>12</sup>. The Minister asked the Appellant to provide an explanation for her delay in requesting reconsideration of the July 11, 2018 decision, and information demonstrating an intention to request a reconsideration.

[13] The Appellant responded to the Minister's September 5, 2019 letter on September 18, 2019<sup>13</sup>. She provided a copy of her letter dated November 9, 2017 addressed to the Minister requesting reconsideration of the Minister's decision denying her application for disability benefits. She noted she forgot to send that letter due to her illness. She provided no further explanation for the delay in making the request, and no further information that demonstrated a continuing intention to request a reconsideration.

[14] The Minister has no record of receiving telephone calls or written enquiries from the Appellant related to the decision denying her May 30, 2018 application during the period subsequent to her receipt of the decision dated July 11, 2018, and October 19, 2018<sup>14</sup>. The decision advised the Appellant of her right to request a reconsideration, how to make such request, and the requirement to make such request within ninety days of receipt of the decision. She did not make the request within the ninety-day limit.

**Reasonable explanation for the delay.**

[15] The Appellant has not provided a reasonable explanation for her significant, almost one year, delay in submitting her reconsideration request. The letter dated November 7, 2017 that she said she forgot to send, dated prior to the Minister's July 11, 2018 decision, is clearly a letter she may have intended to send requesting reconsideration of the Minister' decision dated October 4,

---

<sup>12</sup> GD2 pages 16-17

<sup>13</sup> GD2 pages 6-8

<sup>14</sup>GD1 page 9

2017<sup>15</sup>, that denied her September 29, 2017 pension application. I find the Appellant has not provided a reasonable explanation for the delay in submitting her reconsideration request.

**Continuing intention to request a reconsideration.**

[16] The Appellant never contacted the Minister to advise that she intended to request a reconsideration during the period subsequent to her receipt of the decision dated July 11, 2018, and receipt by the Minister of her written request on June 24, 2019. I find the Appellant has not demonstrated a continuing intention to request a reconsideration.

**The Minister's discretion was exercised judicially when he refused to allow the Appellant a longer period to request a reconsideration.**

[17] I must decide if the Minister exercised his discretion judicially in refusing the Appellant's late reconsideration request, not if the Minister made the correct decision.

[18] I find no evidence the Minister acted in bad faith or acted with an improper purpose or motive when it made the determination to refuse the Appellant's late reconsideration request. The Minister advised the Appellant in its decision letter dated July 11, 2018, of her right to request reconsideration, provided clear instructions on how to make such request, and advised her of the requirement to make such request within ninety days of receipt of the decision. I find the Minister did not take into account an irrelevant factor, ignored a relevant factor, or acted in a discriminatory manner when he made the decision to deny the Appellant's request for a reconsideration.

[19] Before allowing a longer period to make a request for reconsideration of a decision, the Minister must be satisfied that there is a reasonable explanation for requesting a longer period, and a continuing intention to request a reconsideration. Each criterion must be considered by the Minister, and he must be satisfied each criterion have been met.

[20] The Minister considered each criterion. He was not satisfied either criterion was met. He was not satisfied the Appellant provided a reasonable explanation for requesting a longer period to request a reconsideration. He was not satisfied the Appellant demonstrated a continuing

---

<sup>15</sup> GD2 pages 32-34

intention to request a reconsideration. As the Minister was not satisfied either criterion was met he refused the Appellant's request for a longer period to make a request for a reconsideration. I find the Minister exercised his discretion judicially when he refused to allow the Appellant a longer period to request a reconsideration.

[21] This decision to deny the Appellant's late request for a reconsideration request does not preclude her making a further application for CPP disability benefits.

## **CONCLUSION**

[22] The appeal is dismissed.

Patrick O'Neil  
Member, General Division - Income Security