



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. C. v Minister of Employment and Social Development*, 2020 SST 828

Tribunal File Number: GP-19-2000

BETWEEN:

J. C.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Teleconference hearing on: March 26, 2020

Date of decision: March 27, 2020

DECISION

[1] The Minister did not act judicially in making the reconsideration decision. However, the Claimant is not entitled to an extension for filing his reconsideration request. He did not meet the *Canada Pension Plan* criteria for an extension.

OVERVIEW

[2] The Minister granted CPP disability benefits to the Claimant in March 2011. The retroactive payments began in December 2009. However, the Minister later became aware that the Claimant had returned to work. After an investigation, the Minister decided that the Claimant was not entitled to CPP disability benefits as of May 31, 2013. The Minister set this out in a letter dated October 17, 2017 (the “Initial Denial”). The Claimant filed his reconsideration request on August 14, 2019 (the “Reconsideration Request”). In a reconsideration decision dated October 4, 2019, the Minister upheld the Initial Denial, on the basis that the Reconsideration Request was too late. The Claimant appealed the reconsideration decision to the Tribunal.

[3] A person must usually file their reconsideration request within 90 days of receiving the decision. As the Minister received the Claimant’s reconsideration request more than 90 days after he had received the Initial Denial, the Minister had the discretion to deny his request by not extending the 90-day filing period. In this case, the Minister decided not to provide an extension. A person who is not satisfied with a ministerial decision not to grant further time may appeal that decision to the Tribunal.¹ That is what the Claimant did in this case.

ISSUES

[4] When did the 90-day reconsideration request deadline expire?

[5] Did the Minister act judicially, in refusing to grant the Claimant an extension for requesting a reconsideration of the Initial Denial?

[6] If not, what decision should the Minister have made about allowing an extension?

¹ Section 82 of the *Canada Pension Plan*.

ANALYSIS

[7] A person may, within 90 days of receiving a decision, ask the Minister to reconsider that decision. The Minister may, but is not required to, allow a longer period to make that request. The Minister must be satisfied that the person has a reasonable explanation for requesting a longer period, and that the person has demonstrated a continuing intention to request a reconsideration. If the request is filed more than a year after receiving the original decision, the Minister must also be satisfied that the request has a reasonable chance of success. In addition, the Minister must also be satisfied that no prejudice would result from allowing a longer period for the request.²

[8] The Minister's decision to allow or refuse a late reconsideration request is a discretionary decision. The Minister must exercise discretion judicially and judiciously.³ The Tribunal can only interfere with the Minister's discretionary power in certain situations. I cannot interfere with a discretionary power unless the Minister exercised its discretion in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it. Discretionary power is not exercised judicially if the Minister:

- 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.⁴

[9] My role at this stage is not to determine whether the Minister made the right decision. Instead, I must decide whether the Minister exercised discretion judicially and judiciously. I will first determine the date that the Claimant received the Initial Denial, and the expiry of the 90-day period to request a reconsideration of it.

When did the 90-day reconsideration request deadline expire?

[10] The Minister made the Initial Denial on October 17, 2017. At the hearing, the Claimant said he did not recall receiving it. He also said he suffered from memory loss.⁵ In his

² Subsection 81(1) of the *Canada Pension Plan* and subsections 74.1(3) and (4) of the *Canada Pension Plan Regulations*.

³ *Canada (Attorney General) v. Uppal*, 2008 FCA 388.

⁴ *Canada (Attorney General) v. Purcell*, [1996] 1 FC 644.

Reconsideration Request, he did not say when he received the Initial Denial. However, he admitted not making the Reconsideration Request within 90 days of receiving the Initial Denial.⁶

[11] The Claimant said he has a big box of envelopes in a friend's garage. He looks in this big box whenever somebody needs something. He said most of the envelopes weren't opened. Due to his mental health conditions, he is afraid of encountering people, receiving phone calls, and opening mail. If he received the Initial Denial, he said "it should be" in that box of envelopes.

[12] I do not see persuasive evidence in the Tribunal file that the Initial Denial was not successfully delivered to the Claimant. There was a phone call between the Claimant and the Minister on October 30, 2017, in which the Claimant confirmed his home address in North Bay and said he would soon be moving to Windsor.⁷ At the hearing, the Claimant could not recall this call or who initiated it, as he was "moving around all the time".

[13] The Claimant admitted that the Initial Denial "should be" in a box of envelopes in his friend's garage. He also said he had memory loss, and admitted that he did not file the Reconsideration Request within 90 days of receiving the Initial Denial. As a result, I find it likely that he received the Initial Denial shortly after it was issued on October 17, 2017.

[14] I take judicial notice of the fact that Canadian domestic mail is usually received within 10 days. I therefore find that the Claimant received the Initial Denial on October 27, 2017. This means that the 90-day period to request a reconsideration would have ended on January 25, 2018. As this is long before the Claimant filed the Reconsideration Request, I will now decide if the Minister acted judicially when it denied his request.

Did the Minister act judicially, in refusing to grant the Claimant an extension for requesting a reconsideration of the Initial Denial?

[15] For the reasons set out below, I find that the Minister did not act judicially in refusing to grant an extension.

⁵ Memory loss was also mentioned in a 2019 psychological assessment: see GD1-17.

⁶ GD2-8

⁷ GD2-46

[16] I see no evidence that the Minister acted in bad faith, acted in a discriminatory way, considered an irrelevant factor, or acted for an improper purpose or motive. I will now consider whether the Minister ignored a relevant factor.

Did the Minister ignore a relevant factor?

[17] The letters included with the Claimant's Reconsideration Request hint at the possibility that he may not have received the Initial Denial. He said that, in the past, he did not open letters or answer because of fear.⁸ He might also have tried to deal with CPP matters in or around 2018, because in August 2019 he said "the last time I was dealing with CPP disability was last year".⁹

[18] These references are important because the Minister said the Claimant didn't demonstrate any intention to appeal between October 30, 2017, and June 17, 2019. However, the Claimant claimed he was "dealing" with CPP disability at some point in 2018, and hinted that he might not have received the Initial Denial. The Minister should have acknowledged these references and, if they were not relevant, explained why they didn't change the Minister's decision.

[19] As the Minister ignored a relevant factor, the Minister did not act judicially when it denied an extension for his Reconsideration Request.

If the Minister did not act judicially, what decision should the Minister have made about allowing an extension?

[20] I must now make the decision that the Minister should have made when considering the Reconsideration Request. I will now explain how the Claimant does not meet all four criteria for an extension. In this analysis, I may consider evidence given at the hearing. This is important, because the Claimant gave oral evidence about the periods and events in question.

[21] The Minister seems to accept that the Claimant had a reasonable chance of success: he submitted lengthy handwritten evidence about his life and CPP disability benefits. The Minister also did not suggest any prejudice if an extension were granted.¹⁰ The Minister did not attend the hearing or ever contradict those two admissions. I find that the Claimant satisfied the "reasonable

⁸ GD2-40 and GD2-41

⁹ GD2-45

¹⁰ GD2-76

chance of success” and the “lack of prejudice” factors. This means I only must decide whether he established a “reasonable explanation for the delay” and “demonstrated a continuing intention to request a reconsideration”. I will first consider the “continuing intention”.

Did the Claimant demonstrate a continuing intention to request a reconsideration?

[22] To meet this test, the Claimant must demonstrate a continuing intention to request a reconsideration. I have already determined that he received the Initial Denial on October 27, 2017. I see no evidence of any other contact between the Claimant and the Minister, from October 30, 2017 (shortly after the Initial Denial), and June 17, 2019 (shortly before the Minister received the Reconsideration Request). This is very important. However, I must also consider other steps taken by the Claimant during that period.

[23] At the hearing, the Claimant could not recall what steps he took to appeal the Initial Denial. He said he was not good at handling things. He also described a foggy mind, and blamed his extensive medications for memory loss. He said he “had nobody to back me up” at this time.

[24] As noted, the Claimant says he was “dealing with CPP disability” in 2018. However, he provided no details about this. According to his lengthy August 2019 letter, this appears to have been limited to providing CPP-related documents to the Learning Disabilities Association of Windsor (“LDAW”), for his application to the Ontario Disability Support Program (“ODSP”).¹¹ At the hearing, he said LDAW and his mental health specialist were essential to the June 2019 approval of his ODSP benefits.

[25] The Claimant actively pursued his ODSP application during the time in question. In March 2018, Dr. Renaud (Psychologist) assessed him at LDAW’s request. The purpose was to assess his current level of functioning and to determine if he were suitable for the ODSP. While Dr. Renaud noted the Claimant’s receipt of CPP disability benefits up to 2013, Dr. Renaud did not refer to pursuing CPP disability benefits beyond that date or avoiding any repayment.¹² In February 2019, the Claimant completed a self-report form for the ODSP.¹³ In May 2019, Dr.

¹¹ GD2-45

¹² GD1-34 to GD1-38

¹³ GD1-25 to GD1-33

Renaud completed more ODSP reports.¹⁴ Although the Claimant said he had trouble getting medical support, he got significant disability support from Dr. Renaud in both 2018 and 2019.

[26] The Claimant was also very active in the job market in late 2018 and early 2019. In February 2019, he described four distinct jobs in 2018 and 2019.¹⁵ At the hearing, he said he had these jobs between September 2018 and March 2019. He later said he had five jobs in a six-month period.¹⁶ This seemed to refer to the same period starting in September 2018.

[27] Finally, the Claimant attended a mechanic's course at Canadore College.¹⁷ At the hearing, he said he attended between September 2017 and January 2018, when he dropped out due to anxiety concerns. The course was supposed to end in May 2018.

[28] Between October 30, 2017, and June 17, 2019, the Claimant tried to retrain, made multiple attempts to sustain employment, and pursued ODSP benefits. However, I see no compelling evidence about pursuing a reconsideration of the Initial Denial. I find that he has not demonstrated a continuing intention to request a reconsideration for at least that period. As this criterion is mandatory, I do not need to consider whether he also had a reasonable explanation for the delay in making his Reconsideration Request. His appeal cannot succeed.

[29] In making this finding, I acknowledge that the Claimant has gone through some harrowing experiences. At the hearing, he said he has not read the lengthy handwritten letter he submitted with his Reconsideration Request.¹⁸ This is understandable: it was very disturbing to read. My decision should not be interpreted as a rejection of what the Claimant put into writing.

[30] It is not hard to see how the Claimant's traumatic experiences still affect him today. He may well have a reasonable explanation for the delay in filing the Reconsideration Request. Most of his evidence focused on this. However, I cannot ignore the clear wording of the *Canada Pension Plan*. I must apply the legislation as written. The legislation says he must demonstrate a continuing intention to request a reconsideration. Without that, I cannot grant an extension.

¹⁴ GD1-11 to GD1-24

¹⁵ GD1-27

¹⁶ GD2-41

¹⁷ GD2-43

¹⁸ This letter begins at GD2-23.

CONCLUSION

[31] The Minister did not act judicially when it denied an extension to make the Reconsideration Request. This means I had to make the decision that the Minister ought to have made. However, the outcome is the same. As the Claimant did not meet all four requirements for an extension to file his Reconsideration Request, his appeal is dismissed.

Pierre Vanderhout
Member, General Division - Income Security