



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. B. v Minister of Employment and Social Development*, 2020 SST 407

Tribunal File Number: AD-20-83

BETWEEN:

G. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Kate Sellar

DATE OF DECISION: May 8, 2020

DECISION AND REASONS

DECISION

[1] I allow the appeal. The General Division made an error of fact. I will give the decision that the General Division should have given: due to special circumstances, I will vary the requirements for a complete application in this case. That means that appeal the Claimant filed within the 90-day time limit will be considered “complete.” I return the case to the General Division to decide the Claimant’s appeal for the disability pension under the *Canada Pension Plan* (CPP).

OVERVIEW

[2] G. B. (Claimant) has a long history of bipolar disorder, depression, hypomania, and paranoid thoughts. A psychiatrist diagnosed him with schizophrenia in 2012.

[3] The Claimant applied for a disability pension under the CPP. The Minister denied the application initially and on reconsideration. The reconsideration letter is dated August 1, 2014.¹ The Claimant filed an appeal with the General Division on October 23, 2014,² but the Tribunal did not accept it because it was missing information.

[4] In July 2019, with the help of a paralegal, the Claimant re-filed his appeal with the missing information.³ Relying only on the date the appeal was re-filed, the General Division decided that the Claimant could not proceed with his appeal because he filed it more than one year after the day the Minister communicated the reconsideration letter to the Claimant.

[5] I must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (DESDA). If the General Division made an error, I must decide how to fix (remedy) the error.

[6] I allow the appeal. The General Division made an error. I find that there are special circumstances. These special circumstances allow me to vary the filing requirements for the

¹ GD2-8.

² GD1.

³ GD1B-1.

appeal. As a result, I deem the Claimant's initial appeal as complete within the 90-day period. I will return the case to the General Division to decide whether the Claimant is eligible for a disability pension.

ISSUE

[7] Did the General Division make an error of fact by ignoring the Claimant's initial incomplete appeal filed on October 23, 2014?

ANALYSIS

Reviewing General Division decisions

[8] The Appeal Division does not give people a chance to re-argue their case in full at a new hearing. Instead, the Appeal Division reviews the General Division's decision to decide whether there is an error. The Appeal Division bases that review on the wording of the DESDA, which sets out the three possible reasons for (grounds of) appeal.⁴ The three reasons for an appeal arise when the General Division fails to provide a fair process, makes an error of law, or makes an error of fact.

[9] The DESDA says that it is an error when the General Division "bases its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."⁵ A mistake involving the facts has to be important enough that it could affect the outcome of the decision (that is called a "material" fact). The error needs to result from ignoring evidence, willfully going against the evidence, or from reasoning that is not guided by steady judgement.⁶

Time limits for appealing to the General Division

[10] Claimants must bring their appeals to the General Division "in the prescribed form and manner" within 90 days after the Minister communicated the decision.⁷ The General Division

⁴ DESDA, s 58(1).

⁵ DESDA, s 58(1)(c).

⁶ The Federal Court considered these ideas about perverse and capricious findings of fact in a case called *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319.

⁷ DESDA, s 52(1)(b).

can grant an extension of time, but not beyond “one year after the day on which the decision is communicated” to the claimant.⁸

[11] The “prescribed form and manner” for an appeal means an appeal that meets the requirements under the *Social Security Tribunal Regulations* (“SST Regulations”). The SST Regulations state that an appeal to the General Division must include eight specific things, including a copy of the reconsideration decision.⁹

[12] If there are special circumstances, the Tribunal may “dispense a party from compliance” with any part of the SST Regulations.¹⁰ In other words, if there are special circumstances, the General Division can decide to go ahead without either the Claimant or the Minister following a specific part of the SST Regulations. The SST Regulations also say that they need to be understood to achieve “the just, most expeditious and least expensive determination of appeals and applications.”¹¹

Did the General Division make an error of fact?

[13] The General Division made an error of fact by ignoring the Claimant’s initial incomplete appeal filed on October 23, 2014. This incomplete appeal was material. It was important to the legal analysis because, where an appeal is incomplete but filed on time. The General Division needs to consider whether there are special circumstances that warrant dispensing the claimant from complying with any part of the SST Regulations.

[14] The Claimant does not dispute the fact that he received the reconsideration decision no later than 10 days after the Minister mailed it. The letter was dated August 1, 2014, so ten days later is August 11, 2014. He needed to file his appeal to the General Division within 90 days of August 11, 2014. The Claimant filed an incomplete appeal on October 23, 2014 (which was within that 90-day period).

⁸ DESDA, s 52(2).

⁹ SST Regulations, s 24(1).

¹⁰ SST Regulations, s 3(1)(b).

¹¹ SST Regulations, s 2.

[15] The Claimant named his wife as his representative, both in the appeal form and also by completing an authorization to disclose. The Tribunal wrote to both the Claimant and his wife on October 24, 2014. The letter explained that the appeal was not complete. The Tribunal needed a copy of the reconsideration decision the Claimant appealed from, as well as the date the Minister communicated the reconsideration decision to the Claimant. These requirements come from the SST Regulations. In response, the Claimant filed another notice of appeal with the Tribunal.

[16] On February 2, 2015, it appears that the Tribunal sent another letter addressed to both the Claimant and his wife. The Tribunal acknowledged receiving some information, but that the appeal was still incomplete. The letter explained again what was necessary to complete the appeal (the reconsideration decision and the date the Claimant received that decision). The Claimant did not respond.

[17] The Tribunal did not write to the Claimant again until October 26, 2015. On that day, the Tribunal sent a letter to both the Claimant and his wife, stating that the Tribunal did not receive the information needed to complete the appeal. The Tribunal closed the file and returned all of the Claimant's documentation to him. The Tribunal stated that if the Claimant wanted to file another notice of appeal, he would need to request an extension of time.

[18] In May 2019, the Claimant hired a paralegal. The paralegal filed an appeal with the Tribunal on July 22, 2019.¹² This appeal included a copy of the reconsideration decision.¹³

[19] The General Division did not acknowledge or discuss the initially filed incomplete appeal from October 23, 2014, and focussed entirely on the appeal that was re-filed in 2019.

[20] The Claimant's representative argues¹⁴ that the General Division failed to provide a fair process, and made an error by refusing to allow the appeal to continue. The Claimant argues that he intended to appeal within the one-year limit. However, when he appealed, the Claimant had schizophrenia and elements of bipolar disorder. He displayed disorganized thought process and paranoia as well as poor judgement.

¹² GD1B.

¹³ GD1B-12.

¹⁴ AD1A-5 to 7.

[21] The Minister conceded¹⁵ that the General Division made an error of law by failing to consider whether special circumstances applied to the Claimant's appeal. The Claimant filed the incomplete appeal within the 90-day deadline. The General Division asked for a copy of the reconsideration decision to complete the appeal, but Service Canada had not properly labelled the letter as a reconsideration decision. The General Division was "obligated to consider whether special circumstances existed to dispense with any of the requirements for filing"¹⁶ the appeal, and if so, the appeal could have been completed. The Minister argued that the Appeal Division should allow the appeal because the General Division erred in law by not considering whether special circumstances existed.

[22] In my view, the General Division made an error of fact. The General Division decision does not mention the October 23, 2014 appeal. Although the General Division is not required to mention every piece of evidence in its decision, this evidence was important enough that the General Division needed to discuss it. I infer that the fact that the General Division decision does not mention the initial application means that the General Division ignored it.

[23] The initial incomplete appeal is important because if there are special circumstances, the General Division can vary the filing requirements for the application. If the General Division varies the filing requirements, then the appeal is complete and on time. If the appeal had been complete and on time, the matter would have proceeded to a decision about whether the Claimant was eligible for a disability pension.

[24] The General Division made an error of fact by ignoring the fact that the Claimant made an initial incomplete application in 2014. Since the General Division made an error of fact, I find it is not necessary for me in this case to discuss the Claimant's argument about fair process or the Minister's arguments about the error of law.

¹⁵ AD4.

¹⁶ AD4.

REMEDY

[25] Once I have found an error by the General Division, I can return the case to the General Division for reconsideration, or I can give the decision that the General Division should have given.¹⁷

[26] The Minister argued¹⁸ that I should give the decision that the General Division should have given about whether the appeal was filed on time, and then refer the case back to the General Division to decide whether the Claimant is entitled to a disability pension. The Claimant did not object to the Minister's approach.¹⁹

[27] I will give the decision that the General Division should have given about whether the Claimant filed on time. This is the most fair and efficient approach given the circumstances.

[28] The Claimant's appeal was initially filed in October, 2014. Although the Tribunal's file was closed administratively because the appeal was missing information, the Tribunal re-opened that file when the appeal was re-filed in 2019 with the missing information.

[29] I will exercise my discretion to waive some of the requirements for a complete appeal for the Claimant. There were special circumstances in this case that mean that I can dispense with the need for the initial appeal to contain the reconsideration decision and the date on which the Claimant received the reconsideration decision. I deem the appeal complete when it was first filed in October 2014. Therefore, the Claimant's appeal is on time and can proceed.

[30] I have considered what the "special circumstances" part of the SST Regulations means. The SST Regulations do not define what counts as "special circumstances." There is a risk that by defining special circumstances too broadly, Tribunal members excuse parties too easily or too often from following the SST Regulations. This would impact how fair and predictable the Tribunal's processes are for everyone.

¹⁷ DESDA, s 59.

¹⁸ AD4.

¹⁹ AD6.

[31] There is also a risk by defining special circumstances too narrowly, parties are denied access to justice for reasons that relate to procedure rather than substance. It is tempting to dismiss factors that claimants raise (like making a mistake, or failing to be sufficiently diligent, or having disability-related barriers, or lacking representation) as typical or common and therefore not “special circumstances.” Many claimants do not have lawyers, or have disabilities that make participation in bureaucracies difficult. In my view, the factor or factors that make circumstances “special” means that there will be some unusual quality about them. It does not require a situation of singular uniqueness or total novelty.

[32] The Tribunal has considered and applied the special circumstances rule. In one case, there was an incomplete appeal to the Appeal Division, and the Tribunal closed the file. The missing information was eventually filed, and the Tribunal re-opened the case. The Appeal Division member found that there were special circumstances that allowed her to vary the requirements for the appeal. She found that it would be “contrary to the interests of justice” to allow an application for leave to appeal at the Appeal Division to be “defeated” too easily (and just because of a missing decision) without a decision about whether the Claimant qualified for the disability pension.²⁰

[33] There are some special circumstances here. I have considered several factors in this case. When considered together, in my view, these factors amount to special circumstances. This is not to say that any one of these factors would be sufficient alone to constitute special circumstances in future:

- First, the Claimant had help only from a family member and the record references a history of bipolar disorder, depression, hypomania, and paranoid thoughts. A psychiatrist diagnosed the Claimant with schizophrenia. It is reasonable to infer that these diagnoses could impact negatively on a Claimant’s ability to participate in any legal procedure. The Claimant’s disability may be both the reason he seeks this benefit and also the reason he had trouble following the procedures to appeal for it.

²⁰ The case is *L.N. v Minister of Employment and Social Development*, 2015 SSTAD 538, paras 39 to 41.

- Second, the reason the application was incomplete was a missing reconsideration decision (and information about when he received that decision), which the Tribunal might have had ready access to by requesting it from the Minister. The dynamic here is that Tribunal operations at that time did not have the ability internally to take steps to request the reconsideration decision from the Minister and therefore allow the file to proceed to a member.²¹
- Third, the missing reconsideration decision was not labelled as such by Service Canada,²² which may well have been the source of some confusion by the Claimant about what document the Tribunal needed.²³
- Fourth, the result of the Claimant's failure to provide a copy of the reconsideration decision (and the date on which he first received that decision) is contrary to the interests of justice. The General Division denied the Claimant an opportunity to appeal the reconsideration decision about access to the CPP disability pension. The CPP is set up to provide benefits for people who qualify. The impact of failing to provide the reconsideration decision is quite harsh on the Claimant. He did not have the opportunity to have the actual content of his appeal decided by an independent tribunal.
- Fifth, the Tribunal stopped communicating with the Claimant after February 2, 2015, and stopped making any efforts in writing to explain to the Claimant what the Tribunal needed to complete the appeal. This was about 6 months before the end of the one-year time limit.

[34] Considering all these factors together, there are special circumstances in this file. I relieve the Claimant of the requirement to provide the reconsideration decision (and the date he received that decision) as part of his initial appeal. As such, the appeal from October 2014 is deemed

²¹ In *L.N.*, the member noted that the document that was missing from the application for leave to appeal was one that the Appeal Division might have "ready access" to anyway. This case is about the timing of the appeal to the General Division, rather than the appeal to the Appeal Division, so the situation is somewhat different.

²² GD1B-12.

²³ The Minister's submissions recognize this fact. See GD9.

complete and is on time. I will refer the matter back to the General Division to decide whether the Claimant is eligible for a disability pension under the CPP.

CONCLUSION

[35] I allow the appeal. The General Division made an error of fact. I gave the decision that the General Division should have given: there are special circumstances, which means that I can vary the requirements for a complete appeal. I consider the Claimant's initial appeal from October 2014 to be complete. The appeal is therefore on time. I return the case to the General Division to decide whether the Claimant is eligible for a disability pension under the CPP.

Kate Sellar
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	John Lamont, Representative for the Appellant Sarah Rooney, Representative for the Respondent