



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. C. v Minister of Employment and Social Development*, 2020 SST 826

Tribunal File Number: AD-20-696

BETWEEN:

**J. C.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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

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DECISION BY: Kate Sellar

DATE OF DECISION: September 24, 2020

## REASONS AND DECISION

### OVERVIEW

[1] J. C. (the Claimant) has had a lot of trauma in his life. He has a mental health disability. He receives provincial income support for people with disabilities.

[2] The Claimant worked as a conductor for the railroad for many years so he made lots of contributions to the Canada Pension Plan. He applied for a disability pension under the *Canada Pension Plan* (CPP) in 2010. The Minister approved his application. He started receiving the pension.

[3] In the summer of 2014, some mail the Minister sent to the Claimant was returned undeliverable. The Minister tried to contact the Claimant by phone and mail, but that did not work. The Minister suspended the Claimant's pension as of October 2014. The Minister still did not hear from the Claimant even though he was not getting his pension payments in his bank account. The Minister investigated. The Claimant had moved to Edmonton and started working as a mechanic in 2013. He went on EI sickness benefits and then regular benefits starting in the summer of 2015, ending in the summer of 2016. He moved in July 2016 to North Bay.

[4] In December 2016, the Claimant completed and sent some forms the Minister needed about his earnings and his health condition. He also confirmed that he had a new address in North Bay.

[5] In October 2017, the Minister wrote a letter to the Claimant. The letter said that the Minister decided, based on the Claimant's earnings from 2013 to 2015, that he was not disabled according to the CPP anymore. The Minister stopped (ceased) his benefits as of May 31, 2013. In these reasons, I will call that letter the "Minister's decision."

[6] In August 2019, the Claimant wrote a letter asking the Minister to reconsider the decision the stop his pension. The Minister refused to reconsider its decision because the Claimant's request was late. The Minister refused to extend the time for the Claimant.

[7] The Claimant appealed to this Tribunal. The General Division dismissed his appeal. The General Division decided that the Minister did not act fairly (judicially) when it refused to

extend the time allowed to request a reconsideration. The General Division decided the Minister ignored a relevant factor in its decision. Yet after it considered the relevant factor, the General Division came to the same result and did not extend the time allowed to request to reconsideration. I gave the Claimant permission to appeal the General Division's decision.

[8] Now I have to decide whether the General Division made an error under the *Department of Employment and Social Development Act* (DESDA). If I find an error, I have to decide what I will do to fix (remedy) that error.

### **AGREEMENT**

[9] The Claimant and the Minister have asked the Appeal Division to make a decision based on the agreement they reached orally during a settlement conference held on September 15, 2020. The parties agreed that:

- the General Division made an error of fact by deciding that the Claimant received the Minister's initial decision in October of 2017; and
- there was no evidence to suggest that the Claimant received that decision; and
- in fact the Claimant did not receive that initial decision; and
- therefore the Claimant's request for reconsideration was not late.

[10] I am satisfied that the General Division made the error described in the agreement. I allow the Claimant's appeal. I will give the decision that the General Division should have given. The Minister did not prove that the Claimant's request for reconsideration was late. Therefore, the Minister's decision to refuse the extension of time to request reconsideration was not a decision that was exercised judicially.

### **NEXT STEPS**

[11] The parties agreed that the Claimant will request a reconsideration to the Minister again, including any documents that he provided the Appeal Division and that the Minister does not have. The Minister agreed to contact the Claimant and his representative in writing to provide

him with the necessary instructions. The Minister agreed to issue a reconsideration decision. The parties understand that the normal processing time for a decision on reconsideration from the Minister is 6 to 8 weeks.

[12] As the parties are aware, I do not have the power at this stage to make a decision about the Claimant's entitlement to the disability pension.

**CONCLUSION**

[13] The appeal is allowed. The Appeal Division gives the decision that the General Division should have given: the Minister did not prove that Claimant's request for reconsideration was late, and therefore Minister did not act judicially in refusing the extension of time.

Kate Sellar  
Member, Appeal Division

HEARD ON:	
METHOD OF PROCEEDING:	On the Record