



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *PP v Minister of Employment and Social Development*, 2020 SST 1221

Tribunal File Number: GP-20-1179

BETWEEN:

**P. P.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

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

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Decision by: Raymond Raphael

Claimant represented by: Daniel Michaelson

Date of decision: October 16, 2020

## **DECISION**

[1] The time for the Claimant to apply for reconsideration of the denial of his *Canada Pension Plan* (CPP) disability application should not be extended.

## **OVERVIEW**

[2] The Minister received the Claimant's application for a CPP disability pension on September 5, 2018.<sup>1</sup> The Claimant stated that he had been unable to work since May 2015 because of several conditions. These included a concussion, memory problems, depression, anxiety, headaches, and a sleep disorder.<sup>2</sup> The Minister denied the application on February 19, 2019.<sup>3</sup>

[3] The Minister did not receive the Claimant's request for reconsideration until April 14, 2020, which was after the 90-day time limit.<sup>4</sup> On June 25, 2020, the Minister refused to extend the time for the Claimant to apply for reconsideration.<sup>5</sup> The Claimant appealed to the Social Security Tribunal.

## **ISSUE**

[4] Did the Minister exercise its discretion judicially when it refused to extend the time for the Claimant to request reconsideration?

## **ANALYSIS**

[5] The Minister's decision to grant or refuse a late reconsideration request is a discretionary one. The Minister must exercised its discretion judicially.<sup>6</sup>

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<sup>1</sup> GD2-34

<sup>2</sup> GD2-91

<sup>3</sup> GD2-20

<sup>4</sup> GD2-16

<sup>5</sup> GD2- 8 to 9

<sup>6</sup> *Canada (A.G.) v Uppal* 2008 FCA 388

[6] 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>7</sup>

[7] The February 19, 2019 letter denying the Claimant's request for a disability pension provided information on what the Claimant should do if he disagreed with the decision: he must ask the Minister in writing to reconsider the decision within 90 days from when he received the letter.<sup>8</sup>

[8] I have assumed the denial letter was sent to the Claimant by mail. Mail in Canada is usually received within 10 days. I therefore find that the reconsideration decision was communicated to the Claimant by March 1, 2019. He had until May 30, 2019, to request reconsideration.<sup>9</sup> The Minister did not receive his request for reconsideration until April 14, 2020, which was more than a year after the initial decision was communicated to him.

[9] Because the Minister did not receive the Claimant's request for reconsideration until April 14, 2020, it may only allow a longer period to request the reconsideration if satisfied that:

- there is a reasonable explanation for requesting a longer period,
- the Claimant has demonstrated a continuing intention to request reconsideration,
- the request for reconsideration has a reasonable chance of success, and
- allowing a longer period for making the request would not cause any prejudice to the Minister.<sup>10</sup>

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<sup>7</sup> *Canada (A.G.) v. Purcell*, [1996] 1 FCR 644

<sup>8</sup> GD2-21

<sup>9</sup> Section 81 of the CPP

<sup>10</sup> Subsections 74.1(3) and 74.1(4) of the CPP Regulations

[10] All four factors must be met.<sup>11</sup>

[11] In its decision refusing to extend the time for reconsideration, the Minister considered all of the factors set out in paragraph 9, above.

[12] The Claimant stated that his request for reconsideration was late because he had recently retained a lawyer and was not aware of the appeal process until he reviewed his application with his lawyer. His disability is based primarily on cognitive and mental health problems that arose because of significant head trauma. He did not deny receiving the decision letter.<sup>12</sup>

[13] The Minister found that the Claimant had a reasonable chance of success and that granting an extension would not result in prejudice to the Minister. However, the Minister concluded that there was no reasonable explanation for the delay and that there was no evidence of a continuing intention to appeal.<sup>13</sup>

[14] It is not my role to determine if the Minister made the correct determination. My role is to determine whether it exercised its discretion in a judicial manner. The Claimant has the burden of proof to establish that the Minister failed to do so.

[15] The Minister reasonably concluded that there was no reasonable explanation for the delay. It reviewed the medical reports in the file as well as the disability questionnaire. The Minister recognized that the medical reports supported that the Claimant suffered from several mental health conditions including major depressive disorder, adjustment disorder with anxiety, and pain disorder associated with psychological factors. It also recognized that he suffered from problems with memory and concentration. However, it concluded that the reports did not establish that he was unable to understand the appeal process. The Minister also considered that the Claimant had been able to retain his own lawyer, drive a car, and was independent in his activities of daily living.

[16] The Minister also reasonably concluded that the Claimant had not demonstrated a continuing intention to request reconsideration. There was no evidence of any contact on behalf

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<sup>11</sup> *Lazure v Attorney General of Canada* 2018 FC 467, paragraph 25

<sup>12</sup> GD2-16

<sup>13</sup> GD2-10 to 12

of the Claimant with the Minister between the February 2019 decision and the February 2020 letter from his lawyer requesting a copy of the file.<sup>14</sup>

[17] I found no evidence that the Minister acted in bad faith or acted with an improper purpose or motive. I also found that the Minister did not take any irrelevant evidence into consideration.

[18] I find that the Minister exercised its discretion judicially.

## **CONCLUSION**

[19] The appeal is dismissed.

Raymond Raphael  
Member, General Division - Income Security

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<sup>14</sup> GD2-19