



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MB v Minister of Employment and Social Development*, 2020 SST 979

Tribunal File Number: AD-20-820

BETWEEN:

M. B.

Applicant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Decision on Request for Extension of Time Neil Nawaz
and Leave to Appeal by:

Date of Decision: November 23, 2020

DECISION AND REASONS

DECISION

[1] The requests for an extension of time and leave to appeal are refused.

INTRODUCTION

[2] The Claimant is a former courtroom clerk who stopped working in February 2012 after experiencing increasing pain from an old shoulder injury. She has also been diagnosed with cerebral palsy and depression, among other conditions.

[3] In April 2013, she applied for a Canada Pension Plan (CPP) disability pension. The Minister refused the application because it found that she did not have a severe and prolonged disability. The Claimant appealed this refusal to the General Division of the Social Security Tribunal. In November 2015, the General Division allowed the appeal, finding the Claimant disabled as of November 2014, when her psychologist pronounced her physical and psychological conditions to be chronic and persistent in nature.

[4] Now, five years later, the Claimant is attempting to appeal the General Division's decision. She is asking the Tribunal's Appeal Division to change the onset date of her disability from November 2014 to April 2013, when she applied for the pension. She says that she was misdiagnosed and did not know that she had chronic fatigue syndrome (CFS) until March 2019. She says that she actually became incapable of work as of the date she left her job.

ISSUES

[5] Under section 58(1) of the *Department of Employment and Social Development Act*, (DESDA), there are three grounds of appeal to the Appeal Division. A claimant must show that the General Division (i) did not follow procedural fairness or made an error of jurisdiction; (ii) made an error of law; or (iii) made an important error of fact.

[6] An appeal can proceed only if the Appeal Division first grants leave to appeal.¹ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.² This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.³

[7] I have to decide the following questions:

Issue 1: Should the Claimant be granted an extension of time in which to apply for leave to appeal?

Issue 2: If so, does the Claimant's appeal have a reasonable chance of success?

ANALYSIS

Issue 1: Should the Claimant be granted an extension of time in which to apply for leave to appeal?

[8] The Claimant did not specify her objections to the General Division's decision—which, after all, did find in her favour—but she believes that her CPP disability pension should have commenced earlier. However, I have no choice but to find that the Claimant is barred from pursuing her application for leave.

[9] Under section 57(1)(b) of the DESDA, an appeal must be brought to the Appeal Division within 90 days after the day on which the decision was communicated to the applicant. Under section 57(2), the Appeal Division may allow further time to bring an appeal, but in **no case** may an appeal be brought more than one year after the day on which the decision is communicated to the applicant.

[10] In this case, the General Division's decision was issued and mailed to the Claimant on November 3, 2015. Five years later, the Appeal Division received the Claimant's application requesting leave to appeal. The Claimant states that she was too ill to look into requesting an

¹ DESDA, sections 56(1) and 58(3).

² DESDA, section 58(2).

³ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

amendment to her date of disability, and she seems to be suggesting that her CFS diagnosis cast new light on when she became disabled.⁴

[11] Unfortunately for the Claimant, the law is strict and unambiguous for appeals that are submitted after a year. While extenuating circumstances may be considered for appeals that come after 90 days but within a year, the wording of section 57(2) of the DESDA all but eliminates scope for a decision-maker to exercise discretion once 365 days have elapsed. The Claimant's explanation for filing her appeal late is therefore rendered irrelevant, as are other factors, such as financial need or the difficulty in negotiating the appeal process.

[12] I regret having to deny the Claimant an avenue of appeal, but I am bound to follow the letter of the law. The Claimant's submissions amount to a plea that I simply waive the filing deadline and examine her submissions on their merits, but I can only exercise such authority as is granted by the Appeal Division's enabling statute. Support for this position may be found in *Canada v. Esler*,⁵ among other cases, which have held that an administrative tribunal is not a court but a statutory decision-maker and therefore is not empowered to provide any form of equitable relief.

Issue 2: Has the Claimant raised grounds of appeal that would have a reasonable chance of success?

[13] As the Claimant's application for leave to appeal comes more than one year after the General Division's decision was communicated to her, I do not need to consider whether her submissions would have a reasonable chance of success on appeal.

CONCLUSION

[14] The application is refused.



⁴ The Claimant has submitted with her leave to appeal application a large volume of medical information updating her condition over the past five years. I cannot consider this material under the section 58(1) of the DESDA, which only permits me to consider selected types of error on the part of the General Division. The Appeal Division does not ordinarily consider evidence that goes to the timing and substance of a claimant's disability.

⁵ *Canada (Minister of Human Resources Development) v. Esler*, 2004 FC 1567.

Member, Appeal Division

REPRESENTATIVE:	M. B., self-represented
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