



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AS v Minister of Employment and Social Development*, 2021 SST 27

Tribunal File Number: AD-20-871

BETWEEN:

A. S.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time Valerie Hazlett Parker
by:

Date of Decision: January 29, 2021

DECISION AND REASONS

DECISION

[1] An extension of time to apply for leave to appeal is refused.

OVERVIEW

[2] A. S. (Claimant) applied for a Canada Pension Plan disability pension three times. She first applied in 2012. The Minister of Employment and Social Development refused this application. The Claimant did not request that the Minister reconsider this decision at that time.

[3] The Claimant applied again for the disability pension in 2015. The Minister also refused this application. The Claimant requested reconsideration of this decision, and the Minister upheld the refusal on reconsideration.

[4] The Claimant applied for the pension a third time in 2016. The Minister granted the application, and decided that the Claimant was entitled to the pension as of January 2016.

[5] The Claimant requested that the Minister reconsider its 2012 decision that denied her the pension. The Minister upheld its decision to refuse the 2012 application on reconsideration. The Claimant appealed this decision to the Tribunal.

[6] The Tribunal's General Division decided that the Minister failed to act judicially when it refused the Claimant's reconsideration request for the 2012 application. As a result the matter was returned to the Minister for a further decision.

[7] The Claimant now requests leave (permission) to appeal the General Division decision to the Tribunal's Appeal Division. The appeal is late. It is not in the interests of justice to extend time for the application to be filed.

ISSUES

[8] Is the application for leave to appeal late?

[9] If so, should time to file the application be extended?

ANALYSIS

The Appeal is Late

[10] An application for leave to appeal to the Appeal Division must be made within 90 days of when the General Division decision is communicated to the claimant.¹ The General Division decision is dated June 9, 2020. It was mailed to her at that time. Decisions mailed to a claimant are deemed to be received by them ten days after they were mailed.² Therefore, the Claimant is deemed to have received the decision on June 19, 2020. The Claimants application for leave to appeal to the Appeal Division was filed with the Tribunal on December 28, 2020.³ This is more than 90 days after the decision was communicated to the Claimant. Therefore, the application is late.

Time to File the Application is Not Extended

[11] Time to file an application to the Appeal Division may be extended.⁴ The following factors must be considered when deciding whether to extend this time:

- a) Does the claimant show a continuing intention to pursue the application;
- b) Is there is a reasonable explanation for the delay;
- c) Is there any prejudice to the other party in allowing the extension; and
- d) does the appeal have a reasonable chance of success.⁵

The weight to be given to each of these factors may differ in each case, and in some cases, different factors will be relevant. The overriding consideration is that the interests of justice be served.⁶

¹ Section 57(1)(b) of the Department of Employment and Social Development Act

² Section 19 of the Social Security Tribunal Regulations

³ AD1

⁴ Section 57(2) of the Department of Employment and Social Development Act

⁵ Canada (Minister of Human Resources Development) v. Gatellaro, 2005 FC 883

⁶ [1] Canada (Attorney General) v. Larkman, 2012 FCA 204.

[12] In the application to the Appeal Division form the Claimant wrote the following about the appeal being late: “There is not late application in Common Law Courts and Natural law” And “Thre is no appeal in Common Law Courts”.⁷ These statements do not explain the Claimant’s delay in applying for leave to appeal.

[13] They also do not prove that the Claimant had a continuing intention to appeal. I acknowledge that the Claimant continued to make applications for the disability pension, however, an intention to apply for the pension may be different than a continuing intention to appeal. I cannot decide this with the material that has been filed with the Tribunal.

[14] There is also nothing in the documents filed with the Tribunal that suggests that there would be any prejudice to the Minister if this matter were to proceed.

[15] The appeal does not have a reasonable chance of success. The General Division decided that the Minister failed to act judicially when it refused the Claimant’s request to extend time to reconsider its decision. Therefore, this request has been returned to the Minister so that it can make its decision judicially.

[16] This matter was returned to the Minister over six months ago. It has not yet made its decision. No reason for this delay has been provided. However, when the Tribunal asked the Minister about this, it replied that it intends to make a decision as soon as possible.⁸

[17] An appeal to the Tribunal’s Appeal Division is not a re-hearing of the original claim. Instead, the Appeal Division can only decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or

⁷ AD1-4

⁸ AD4

d) based its decision on an important factual error.⁹

[18] However, a claimant must first obtain leave (permission) to appeal. Leave to appeal to the Appeal Division must be refused if the appeal does not have a reasonable chance of success. Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal (reason for appealing) that the Appeal Division can consider and on which the appeal has a reasonable chance of success.

[19] The Claimant has not presented any grounds of appeal that can be considered. In the application to the Appeal Division she wrote that there are no appeals in Common Law Courts, that she should be paid from the date she first applied for the pension, that she should be paid for trespass on her property and harm caused to her.¹⁰ None of these arguments point to any error made by the General Division.

[20] The Tribunal wrote to the Claimant, explained what grounds of appeal can be considered, and asked her to provide this. The Claimant responded by letter. She asked why she wasn't being paid from the first time she applied for the disability pension, and that the Tribunal is using the wrong law, that there is no late or appeal in common law.

[21] This also does not disclose any ground of appeal that the Appeal Division can consider.

[22] I place the greatest weight on the fact that the appeal does not have a reasonable chance of success. It is not in the interests of justice to extend time to appeal when the matter does not have a reasonable chance of success on its merits.

CONCLUSION

[23] An extension of time to apply for leave to appeal is refused.

[24] The Tribunal file will be closed.

Valerie Hazlett Parker

⁹ a) This paraphrases the grounds of appeal set out in s. 58(1) of the Department of Employment and Social Development Act

¹⁰ AD1-3

Member, Appeal Division

REPRESENTATIVE:	A. S., Self-represented
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