



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *PC v Minister of Employment and Social Development*, 2021 SST 103

Tribunal File Number: AD-21-36

BETWEEN:

P. C.

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: March 18, 2021

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] P. C. (Claimant) completed Grade 10 and earned a Continuing Care Assistant certificate. She worked in physically demanding jobs. She last worked as a care assistant for bed-ridden residents. In 2016, the Claimant injured her right arm. Despite treatment, she continues to have pain and limitations as a result of this injury. She has not worked since she was injured.

[3] The Claimant applied for a Canada Pension Plan disability pension and says that she is disabled because of her arm. She also has other conditions, including pain in her other arm, diabetes, and depression. The Minister of Employment and Social Development refused the application. The Claimant appealed to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that the Claimant had not proven that her disability was severe, and she had not demonstrated that she could not obtain and maintain work because of her health condition.

[4] The Claimant now seeks to appeal to the Tribunal's Appeal Division. This appeal cannot go ahead. The application to the Appeal Division was filed late. Time to file the application is not extended.

ISSUES

[5] Is the application to the Appeal Division late?

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

ANALYSIS

The application to the Appeal Division is late

[7] An application to the Appeal Division must be made within 90 days of the General Division decision being communicated to a claimant.¹ The General Division decision is dated June 12, 2020. It was mailed to the Claimant on June 15, 2020. The Claimant says that she does not remember when she received it.² However, a claimant is deemed to have received a decision 10 days after it is mailed to them.³ Therefore, the Claimant is deemed to have received the General Division decision on June 25, 2020.

[8] The Claimant filed her application with the Tribunal on February 22, 2021. This is more than 90 days after she received the decision. Therefore, it is late.

Time to file the application is not extended

[9] The Appeal Division may extend time for an application to be filed.⁴ To decide whether to extend time, the following factors must be considered and weighed:

- a) Is there a continuing intention to pursue the application?
- b) Is there a reasonable explanation for the delay?
- c) Is there is any prejudice to the other party in allowing the extension?
- d) Does the matter have a reasonable chance of success on appeal?⁵

[10] The weight to be given to each of these factors may differ in each case. 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 AD01A.

³ Section 19 of the *Social Security Tribunal Regulations*.

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

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

⁶ *Canada (Attorney General) v Larkman*, 2012 FCA 204.

[11] When the Claimant first contacted the Appeal Division asking to appeal the General Division decision, she stated that she had new information from her nurse practitioner and asked that the Appeal Division take another look at her case.⁷ This does not explain why the application was late or provide any grounds of appeal that the Appeal Division can consider. The Tribunal wrote to the Claimant and explained what grounds of appeal could be considered. It also included a copy of the Application to the Appeal Division form for the Claimant to complete.

[12] The Claimant filled out the form and sent it to the Tribunal. Her ground of appeal and reason for appealing late is that she has new medical information.

[13] From this, the Appeal Division cannot decide that the Claimant had a continuing intention to appeal or any explanation for her delay in doing so.

[14] There is no information about any prejudice to the Minister if this matter were to proceed.

[15] The Claimant has not presented any grounds of appeal upon which the Appeal Division can decide that the appeal has a reasonable chance of success. I place the most weight on this. It is the same legal test that must be met to be granted leave (permission) to appeal.⁸

[16] The only grounds of appeal that the Appeal Division can consider are that 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
- d) based its decision on an important factual error.⁹

⁷ AD01.

⁸ See section 58(2) of the *Department of Employment and Social Development Act*.

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

[17] The Claimant bases her application for leave to appeal on new medical evidence. However, new evidence generally is not permitted on an appeal.¹⁰ This ground of appeal does not point to the General Division having made any error that the Appeal Division can consider. Therefore, the appeal does not have a reasonable chance of success.

[18] It is not in the interests of justice to extend time to file an application with the Appeal Division if the appeal does not have a reasonable chance of success on its merits.

CONCLUSION

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

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	P. C., self-represented
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¹⁰ *Canada (Attorney General) v O'keefe*, 2016 FC 503.