



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *DA v Minister of Employment and Social Development*, 2021 SST 281

Tribunal File Number: AD-21-73

BETWEEN:

**D. A.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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

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

Date of Decision: June 15, 2021

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] D. A. (Claimant) earned a college certificate. He worked as a professional dancer for many years. He stopped dancing when he seriously injured his knee. After that, he worked as a collections agent and a paralegal.

[3] The Claimant applied for a Canada Pension Plan disability pension. He says that he is disabled by a number of conditions, including memory loss, confusion, poor concentration, depression, and pain.

[4] 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 did not have a severe disability that arose during the prorated (adjusted) minimum qualifying period (MQP).<sup>1</sup>

[5] The Claimant now asks for leave (permission) to appeal this decision to the Tribunal's Appeal Division. The application for leave to appeal is late. An extension of time to file the application is refused because the Claimant did not show that he had a continuing intention to appeal and because the appeal does not have a reasonable chance of success.

### ISSUES

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

[7] If so, should an extension of time to file the application be granted?

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<sup>1</sup> The MQP is the date by which a claimant must prove that they are disabled to receive the disability pension. It is based on when and how much the person contributed to the *Canada Pension Plan*. Section 19 of the *Canada Pension Plan* provides that, when a person's earnings and contributions are below the year's basic exemption for that year, their earnings and contributions can be prorated if they became disabled during the prorated period. The Claimant's contributions allow for a prorated MQP. Therefore, to receive the disability pension, the Claimant must prove that he became disabled between January 1, 2009, and May 31, 2009.

## ANALYSIS

[8] An appeal to the Tribunal's Appeal Division must be filed within 90 days of when the claimant receives the General Division decision.<sup>2</sup> The General Division decision is dated February 29, 2020. The Claimant does not remember when he received it. However, a decision is deemed to have been received by a person 10 days after it is mailed to them.<sup>3</sup> Therefore, the Claimant is deemed to have received the decision on March 10, 2020.

[9] The Claimant filed the application to the Appeal Division with the Tribunal on March 21, 2021. This is far more than 90 days after he received the General Division decision. Therefore, the application is late.

[10] The Appeal Division can extend the time for an application.<sup>4</sup> When deciding whether to grant an extension of time, the Appeal Division must consider the following:

- 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; and
- d) Does the appeal have a reasonable chance of success?<sup>5</sup>

[11] Other factors may also be relevant. The overriding consideration is that the interests of justice be served.<sup>6</sup>

[12] The Claimant did not contact the Tribunal after he received the General Division decision, until he filed the application to the Appeal Division. Therefore, there is no basis for me to conclude that he had a continuing intention to appeal.

[13] The Claimant sent a number of emails to the Tribunal after he filed the application. In some of these emails, he writes about being hospitalized for serious conditions. This explains

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<sup>2</sup> See section 57(1) of the *Department of Employment and Social Development Act*.

<sup>3</sup> See section 19(1)(a) of the *Social Security Tribunal Regulations*.

<sup>4</sup> See section 57(2) of the *Department of Employment and Social Development Act*.

<sup>5</sup> See *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883.

<sup>6</sup> See *Canada (Attorney General) v Larkman*, 2012 FCA 204.

why the delay after he filed the application, but not before. Therefore, I cannot conclude that the Claimant had a reasonable explanation for his delay in making the application to the Appeal Division.

[14] Nothing before me refers to any prejudice to the Minister if this matter were to proceed.

[15] I place the greatest weight on the factor that the appeal does not have a reasonable chance of success. It is not in the interests of justice to extend time to file an application when the appeal does not have a reasonable chance to succeed on its merits. This is also the legal test that must be met for leave to appeal to be granted.<sup>7</sup>

[16] An appeal to the Tribunal's Appeal Division is not a rehearing 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
- d) based its decision on an important factual error.<sup>8</sup>

[17] 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.

[18] The Claimant did not set out any grounds of appeal that can be considered in his application to the Appeal Division. The Tribunal wrote to the Claimant, explained what grounds of appeal can be considered, and asked him to provide this. When the Claimant asked for more time to do so, it was also given to him.

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<sup>7</sup> See section 58(2) of the *Department of Employment and Social Development Act*.

<sup>8</sup> This paraphrases the grounds of appeal set out in section 58(1) of the *Department of Employment and Social Development Act*.

[19] In the documents filed with the Tribunal, the Claimant says that leave to appeal should be granted because the adjudicator did not acknowledge some of his medical conditions (for example, that four teeth were removed and that he has swelling on his legs).

[20] However, The General Division had to consider whether the Claimant became disabled between January 1, 2009, and May 31, 2009. This is set out in the decision.<sup>9</sup> The decision summarizes the Claimant's medical conditions at that time. Any medical conditions that developed after May 31, 2009, are not relevant to the decision. So, the General Division's failure to refer to them is not a ground of appeal upon which the appeal has a reasonable chance of success.

[21] The Claimant also sets out a number of other medical conditions that he now has. They are not referred to in the General Division decision. Again, the General Division made no error when it failed to mention them, because they were not present during the MQP time.

[22] I have read the General Division decision and reviewed the written record. The General Division did not overlook or misconstrue any important information.

[23] There is no suggestion that the General Division made an error in law or failed to provide a fair process.

## CONCLUSION

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

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVE:	D. A., self-represented
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<sup>9</sup> See General Division decision at para 4.