Citation: *AS v Minister of Employment and Social Development*, 2022 SST 55

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	A. S.
Respondent:	Minister of Employment and Social Development

Decision under appeal:	General Division decision dated October 26, 2021 (GP-21-1865)

Tribunal member:	Neil Nawaz
Decision date:	February 7, 2022
File number:	AD-22-61

Decision

[1] Permission to appeal is refused. I see no basis for this appeal to go forward.

Overview

[2] This case is about a late appeal for a *Canada Pension Plan* (CPP) disability pension.

[3] The Claimant, A. S., is a 47-year-old former drywaller. He stopped working in 2011 after developing back pain and bilateral hernias, among other conditions. He has unsuccessfully applied for the CPP disability pension three times, most recently in March 2019. On that last occasion, the Minister denied his application initially and again on reconsideration. The Claimant appealed that denial to this Tribunal's General Division.

[4] The General Division dismissed the appeal because the Claimant submitted it more than one year after he had received the Minister's reconsideration letter.[1] The Claimant then asked the Tribunal's Appeal Division for permission to appeal, alleging that the General Division ignored medical evidence showing that he was no longer able to work.

Issue

[5] There are four grounds of appeal to the Appeal Division. Claimants must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.[2]

[6] An appeal can proceed only if the Appeal Division first grants permission to appeal.[3] At this stage, the Appeal Division must be satisfied that the appeal has a

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[1] See General Division decision dated October 26, 2021.
[2] *Department of Employment and Social Development Act* (DESDA), section 58(1).
[3] DESDA, sections 56(1) and 58(3).

reasonable chance of success.[4] This is a fairly easy test to meet, and it means that claimants must present at least one arguable case.[5]

[7] In this appeal, I had to decide whether the Claimant raised an arguable case.

Analysis

[8] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Claimant does not have an arguable case.

[9] Under the law, an appeal to the General Division must be submitted to the Tribunal within 90 days after the day on which the Minister's reconsideration decision was communicated to the claimant.[6] The General Division may allow further time to make the appeal, but in no case can it be made more than one year after the day on which the decision was communicated to the claimant.[7]

[10] In this case, the General Division found that the notice of appeal was submitted to the Tribunal more than a year after the Claimant received the Minister's reconsideration letter. I don't see an arguable case that the General Division committed an error when it made this finding.

[11] In his correspondence, the Claimant never denied that he submitted his notice of appeal more than a year after the Minister issued its reconsideration letter. The record shows that the Minister's reconsideration letter was dated June 4, 2020 and that the Claimant's notice of appeal was not filed until August 29, 2021—nearly 15 months later. The General Division made a reasonable presumption that the reconsideration letter was delivered to the Claimant within 10 days after it was sent. The Claimant has not attempted to rebut that presumption.

[12] The Claimant blamed the COVID-19 pandemic for his late appeal, although he did not explain how it prevented him from submitting the appeal on time. The General

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[4] DESDA, section 58(2).
[5] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[6] DESDA, section 52(1)(b).
[7] DESDA, section 52(2).

Division reviewed the evidence and saw nothing to indicate that he had filed any document with the Tribunal until well after one-year “hard” deadline. The Claimant has not identified an error in this finding.

[13] For appeals submitted more than one year after reconsideration, the law is strict and unambiguous. The governing legislation states that **in no case** may an appeal be brought more than one year after the reconsideration decision was communicated to a claimant. While extenuating circumstances may be considered for appeals that come after 90 days but within a year, the wording of the legislation eliminates any scope for a decision-maker to exercise discretion once the year has elapsed. The Claimant’s explanations for filing his appeal late are therefore rendered irrelevant, as are other factors, such as the merits of his disability claim.

[14] It is unfortunate that missing a filing deadline may have cost the Claimant an opportunity to make an appeal, but the General Division was bound to follow the letter of the law, and so am I. The Claimant may regard this outcome as unfair, but I can only exercise the powers granted to me by the Appeal Division’s enabling legislation.[8]

Conclusion

[15] The Claimant has not identified any grounds of appeal that have a reasonable chance of success.

[16] Permission to appeal is refused.

Member, Appeal Division

[8] See *Pincombe v Canada (Attorney General)*, [1995] F.C.J. No. 1320 and *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.