



Citation: *LN v Minister of Employment and Social Development*, 2022 SST 980

Social Security Tribunal of Canada Appeal Division

Extension of Time Decision

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| Applicant (Claimant): | L. N. |
| Respondent: | Minister of Employment and Social Development |
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| Decision under appeal: | General Division decision dated May 12, 2022 (GP-21-2425) |
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| Tribunal member: | Kate Sellar |
| Decision date: | October 3, 2022 |
| File number: | AD-22-593 |

Decision

[1] I am refusing an extension of time to apply for leave (permission) to appeal. The appeal will not go ahead. This decision explains why.

Overview

[2] L. N. (Claimant) has high a school education from Yugoslavia and forklift training. In 2015, he was in a car accident. He recovered, and started work again in June 2018. He worked in maintenance and renovation. He slipped and fell on ice in January 2019. He hurt his neck and his back. He tried to return to work in June 2019. He worked for a few days before the pain was too much. He hasn't worked since.

[3] The Claimant applied for a Canada Pension Plan (CPP) disability pension on March 10, 2020. The Minister of Employment and Social Development (Minister) refused his application. The Claimant appealed the Minister's decision to this Tribunal.

[4] The General Division dismissed the Claimant's appeal. The General Division decided that while the Claimant could no longer do his old job by April 30, 2019, he had some capacity for less physically demanding work. The Claimant wasn't able to show that efforts to get and keep work were unsuccessful because of his disability.

[5] I must decide whether the Claimant's application to the Appeal Division is late. If it is late, I must decide whether I should extend the time for filing the application.

[6] The Claimant's application to the Appeal Division is late. I'm not extending the time for filing because the Claimant's appeal does not have a reasonable chance of success. It isn't in the interests of justice to allow the Claimant's appeal to go ahead to the next step.

No new medical evidence

[7] The Claimant wrote to the Appeal Division explaining that he is waiting for some more medical information about his condition. He met with a new surgeon and he will be having a new MRI. He has also started new chiropractic treatments.¹

[8] My role on the Appeal Division is to decide whether the Claimant will receive an extension of time to appeal. If I were to grant that extension of time, I would move on to decide whether it is arguable that the General Division made an error.

[9] In most cases, the General Division does not consider new evidence when deciding whether the General Division made an error.² The rule against considering new evidence at the Appeal Division level applies to this case. I will not wait for or consider new medical evidence in this appeal. New medical evidence would not help me to answer the questions I need to decide in this case.

Issues

[10] The issues in this appeal are as follows:

- a) Was the application to the Appeal Division late?
- b) If so, should I extend the time for filing the application?

Analysis

The application was late

[11] The General Division decision is dated May 12, 2022. The Claimant asked for permission to appeal on August 24, 2022.³

¹ See AD1B-1.

² See *Parchment v Canada (Attorney General)*, 2017 FC 354.

³ See AD1.

[12] The Claimant stated that he received his reconsideration decision on May 30, 2022.⁴ However, the Tribunal's cover letter for the email attaching the General Division decision is dated May 12, 2022.

[13] The Claimant provided no other information about the circumstances surrounding that alleged delay in receiving the decision. After receiving the letter from the Tribunal explaining that his application for leave to appeal appeared to be late, the Claimant provided an explanation about why his application was late.⁵

[14] Given all of the information above, I find that the Tribunal emailed the Claimant the General Division decision by May 12, 2022, as is their practice. In which case, the Claimant requested permission to appeal past the 90-day deadline.⁶

[15] The appeal is late.

The test for granting an extension of time

[16] When deciding whether to grant an extension of time, I have to consider the following factors:

- a) Was there a continuing intention to pursue the application?
- b) Does the application show an arguable case?
- c) Is there a reasonable explanation for the delay?
- d) Is there prejudice to the other party?⁷

⁴ See AD1-6.

⁵ See AD1B.

⁶ Claimants must request leave to appeal to the Appeal Division within 90 days after the day the Tribunal communicates the General Division decision, see section 57(1)(b) of the *Department of Employment and Social Development Act (Act)*.

⁷ The Federal Court set out this test in *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 833.

[17] The importance of each factor may be different depending on the case. Above all, I have to consider whether granting the extension of time serves the interests of justice.⁸

– **Continuing intention to appeal**

[18] The Claimant has not shown a continuing intention to appeal. I do not see any evidence of the Claimant contacting the Tribunal anytime after May 12, 2022 until he requested permission to appeal on August 24, 2022.

– **Arguable case**

[19] The Claimant does not have an arguable case on appeal.

[20] To have an arguable case, the Claimant needs to show that there is an argument for an error by the General Division that has a reasonable chance of success.

[21] The Claimant argues that the General Division decision is not right, and that the General Division should have concluded that he is eligible for the disability pension. The Claimant points out that his condition is getting worse (as evidence by the second report from one of his doctors from March 2020). He has more functional limitations. The improvements he had in the past were short-lived. He says that his condition is severe within the meaning of the *Canada Pension Plan*.⁹

[22] I've reviewed the Claimants arguments and they don't have a reasonable chance of success on appeal. The General Division had to stay focused on whether the Claimant's disability was severe and prolonged:

- On or before December 31, 2018, which was the last day of his minimum qualifying period (MQP) based on his contributions to the CPP;

OR

⁸ The Federal Court of Appeal outlined this test in *Canada (Attorney General) v Larkman*, 2021 FCA 204.

⁹ See AD1-5. The Claimant completed the wrong form, but his reasons for disagreeing with the decision are still there.

- Between January 1, 2019 and April 30, 2019, another time that the Claimant had coverage under the CPP based on some contributions to the CPP that he made for a part of a year.¹⁰

[23] The General Division's reasons for dismissing the Claimant's appeal are about whether the Claimant's disability was severe and prolonged during those times listed above. The information the Claimant is providing about how much worse his conditions became after April 30, 2019 cannot form the basis for a successful appeal of the General Division's decision.

[24] The Claimant disagrees with the conclusions the General Division drew when it applied the facts to the law. But that not a possible error that I can address.¹¹

[25] The Claimant's arguments about possible errors by the General Division do not have a reasonable chance of success. Put another way, the Claimant does not have an arguable case on appeal.

– **Reasonable explanation for the delay**

[26] The Claimant's explanation for the delay is reasonable.

[27] The Tribunal wrote to him to tell him that the application for leave to appeal appeared to be late. In response, the Claimant explained that he was waiting for additional medical information from the new surgeon he saw (he was booked for a new MRI). He also stated that could provide more evidence about new chiropractic treatments he was trying.¹²

[28] This explanation is reasonable in the sense that I understand that the Claimant made a mistake. The Appeal Division does not hear new medical evidence as part of the process of deciding whether the General Division made an error.

¹⁰ See paragraph 6 of the General Division decision.

¹¹ See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

¹² See AD1B.

[29] The Claimant was mistaken about what happens at the Appeal Division. His explanation is sufficiently reasonable.

– **Prejudice to the other party**

[30] I have no concern that the Minister would be prejudiced because of the Claimant's delay in requesting permission to appeal. The delay was minimal. The delay wouldn't affect the Minister's ability to make arguments about the appeal.

I'm not granting an extension of time

[31] In this case, the most important factor is the arguable case. Although the Claimant's explanation for the delay is reasonable, and there's no prejudice to the Minister, it's not in the interests of justice to give the Claimant an extension of time to appeal because he doesn't have any reasonable chance of success in that appeal. The fact that he did not show a continuing intention to appeal is less relevant when I consider all of the factors together.

[32] Even if I were wrong about whether the appeal is late, without an arguable case, I would not grant leave (permission) to appeal anyway.¹³

General Division did not ignore or misunderstand the evidence

[33] I have reviewed the file and did not see any suggestion that the General Division ignored or misunderstood the evidence.¹⁴ The General Division reviewed the Claimant's testimony, the medical evidence, the Claimant's personal circumstances, his treatment, and the information about the work he did during his coverage period. The medical evidence showed that the Claimant had some capacity for work.¹⁵ He showed that after April 2019 he made an effort to return to a modified version of his previous job but that

¹³ To grant permission to appeal, the Appeal Division must be satisfied that the Claimant has an arguable case for one of the possible errors outlined in section 58(1) of the Act.

¹⁴ This kind of review is consistent with what the Federal Court expected in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

¹⁵ See paragraphs 30 and 31 in the General Division decision.

effort failed. The General Division found that the Claimant did not show efforts to get and keep employment were unsuccessful because of the disability.

[34] The General Division's job is to hear and weight the evidence on issues like that and then make a decision. I will not interfere in the General Division's analysis on that key issue unless there is a possible error there. I don't see a possible error.

Conclusion

[35] I refused the Claimant's request for an extension of time. This means that the appeal will not go ahead.

Kate Sellar
Member, Appeal Division