



Citation: *GM v Minister of Employment and Social Development*, 2022 SST 1026

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: G. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated July 25, 2022
(GP-22-1167)

Tribunal member: Kate Sellar

Decision date: October 11, 2022

File number: AD-22-695

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not go ahead. These reasons explain why.

Overview

[2] G. M. (Claimant) applied for a Canada Pension Plan (CPP) disability pension. The Minister of Employment and Social Development (Minister) refused her application. The Claimant asked the Minister to reconsider. The Minister's reconsideration decision letter is dated May 1, 2020.¹ The Minister denied reconsideration. The Claimant appealed to this Tribunal in June 2022.²

[3] On July 25, 2022, the General Division decided that the Claimant didn't bring her appeal in time. The General Division explained that the Claimant could not have an extension of time because her appeal was more than one year late. The Claimant asks the Appeal Division for permission to appeal that decision.

[4] I must decide whether the General Division may have made an error under the *Department of Employment and Social Development Act (Act)* that would justify giving the Claimant permission to appeal.

[5] The Claimant hasn't raised any argument that has a reasonable chance of success on appeal. I cannot grant permission to appeal.

Issue

[6] Could the General Division have made an error that would justify granting the Claimant permission to appeal?

¹ See GD2-14.

² GD1 is stamped received June 22, 2022.

Analysis

Reviewing General Division decisions

[7] The Appeal Division does not provide an opportunity for the parties to re-argue their case in full. Instead, I reviewed the documents in the appeal to decide whether the General Division may have made any errors.

[8] That review is based on the wording of the Act, which sets out the “grounds of appeal.” The grounds of appeal are the reasons for the appeal. To grant leave to appeal, I must find that it is arguable that the General Division made at least one of the following errors:

- It acted unfairly.
- It failed to decide an issue that it should have, or decided an issue that it should not have.
- It based its decision on an important error regarding the facts in the file.
- It misinterpreted or misapplied the law.³

[9] At the leave to appeal stage, a claimant must show that the appeal has a reasonable chance of success.⁴ To do this, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.⁵

No possible error that justifies granting leave to appeal

[10] The Claimant hasn’t raised any possible error with the General Division’s decision that would justify granting her permission to appeal.

[11] Claimants have 90 days from when the Minister communicates the reconsideration decision to appeal to the General Division.⁶ The General Division can

³ See section 58(1) of the *Department of Employment and Social Development Act* (Act).

⁴ See section 58(2) of the Act.

⁵ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁶ See section 52(1)(b).

grant claimants extensions of time. However, in **no case** can the General Division give an extension of time when the claimant brings the appeal more than one year after the day the Minister communicated the reconsideration decision.⁷

[12] The General Division explained that it did not have the legal authority to give the Claimant an extension of time to appeal.⁸ Nothing in the legislation allows the General Division to give a claimant an extension of time when the claimant files the appeal more than a year after the Minister communicates the reconsideration decision.

[13] The General Division found that the Minister communicated the reconsideration decision by mail 10 days after the date on the letter (that is, 10 days after May 1, 2020). The Claimant filed the appeal to the General Division far more than a year after that, in June 2022.

[14] When the Claimant filed the request for permission to appeal, she didn't check the box on the appeal form for any of the possible errors that the General Division could have made that would justify granting leave to appeal.⁹ She explained (as she did at the General Division) that she wrote a letter asking to appeal the General Division's decision, and that she mailed that letter on August 6, 2020.¹⁰ When she never heard anything back from the General Division, she explained further that she followed up by phone on November 17, 2021, and then she sent the appeal to the General Division again.¹¹

[15] The Claimant doesn't challenge the General Division's finding about the fact that she received the reconsideration decision from the Minister in May 2020. She says she mailed her request for leave to appeal on August 6, 2020. This is long before the end of the one-year deadline. However, the Tribunal has no record of contact with the Claimant of any kind until June 2022.

⁷ See section 52(2) of the Act.

⁸ See paragraph 7 in the General Division's decision.

⁹ See AD1-3.

¹⁰ See GD1-5 for the explanation the Claimant provided at the General Division level.

¹¹ See AD1-3 for the explanation the Claimant provided at the Appeal Division level.

[16] The Claimant hasn't raised any arguments on appeal that have a reasonable chance of success. The General Division applied the law, which says in **no case** can the General Division grant an extension of time after that one-year mark. The Claimant's explanation about mailing an appeal earlier did not provide any alternate path for the General Division to follow that would lead to granting the extension of time.

[17] The one-year timeline started running when the Claimant received the reconsideration decision in May 2020. The timeline ended **not** when the Claimant said she tried to mail an appeal, but when the General Division actually received the appeal in June 2022. The amount of time between the May 2020 and June 2022 is well beyond the one-year timeline the law allows. The General Division could not give the Claimant an extension of time.

[18] The Claimant does not have a reasonable chance of success in appealing the General Division's decision about her late appeal. There is no argument here that would justify granting the Claimant permission to appeal.

Conclusion

[19] I have refused leave to appeal. This means that the appeal will not go ahead.

Kate Sellar

Member, Appeal Division