



Citation: *MG v Minister of Employment and Social Development*, 2022 SST 967

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant (Claimant):** M. G.  
**Representative:** Warren WhiteKnight

**Respondent:** Minister of Employment and Social Development

---

**Decision under appeal:** General Division decision dated July 29, 2022  
(GP-22-1149)

---

**Tribunal member:** Kate Sellar

**Decision date:** October 3, 2022

**File number:** AD-22-637

## Decision

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

## Overview

[2] M. G. (Claimant) applied for a Canada Pension Plan (CPP) disability pension. The Minister of Employment and Social Development (Minister) refused the application. The Claimant asked the Minister to reconsider. The Minister's decision on reconsideration is dated March 29, 2021.<sup>1</sup> It says that the Claimant is not entitled to a disability pension.

[3] The Claimant appealed the Minister's reconsideration decision to this Tribunal on June 21, 2022.<sup>2</sup> The General Division found that the Claimant's lawyer filed the appeal more than a year after the Minister communicated its reconsideration decision to the Claimant. When the appeal is more than a year late, the General Division has no power to give an extension for any reason.<sup>3</sup> The General Division refused to give the Claimant an extension of time to file the appeal.

[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 has not raised any argument that has a reasonable chance of success on appeal. I cannot grant permission to appeal.

## Issue

[6] Did the General Division make an error by failing to provide the Claimant with a fair process?

---

<sup>1</sup> See GD2-11.

<sup>2</sup> See the date stamp on the documents in GD1.

<sup>3</sup> See paragraph 3 of the General Division decision, explaining the one-year time limit in section 52(2) of the *Department of Employment and Social Development Act* (Act).

## 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.<sup>4</sup>

[9] What fairness requires will depend on the context.<sup>5</sup> Fairness requires that a claimant have an opportunity to raise every fact or factor likely to impact the decision.<sup>6</sup>

[10] At the leave to appeal stage, a claimant must show that the appeal has a reasonable chance of success.<sup>7</sup> To do this, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.<sup>8</sup>

---

<sup>4</sup> See section 58(1) of the Act.

<sup>5</sup> The Supreme Court of Canada explained this in a case called *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC), [1999] 2 SCR 817.

<sup>6</sup> See *Kou See Kouama v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9008 (FC).

<sup>7</sup> See section 58(2) of the Act.

<sup>8</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

## **No arguable case for a fair process error**

[11] There is no arguable case that the General Division failed to provide the Claimant with a fair process.

[12] The Claimant argues that the General Division made an error by failing to provide the Claimant with a fair process. The Claimant argues that the circumstances of the COVID-19 pandemic and other issues meant that he was not able to hire a lawyer to file an appeal sooner. The Claimant notes that the impact of the General Division's refusing to extend the time is to deny the Claimant the opportunity for a fair process to challenge the Minister's reconsideration decision about his eligibility for the disability pension.

[13] The General Division explained that it did not have the legal authority to give the Claimant an extension of time to appeal.<sup>9</sup> There is nothing in the legislation that allows the General Division to provide an extension of time when the Claimant files the appeal more than a year after the Minister communicates the reconsideration decision.

[14] The General Division found that the Claimant reconsideration decision was likely communicated to the Claimant by mail 10 days after the date on the letter. The Claimant filed the application more than a year after that. The Claimant does not challenge these facts in his application for leave to appeal.<sup>10</sup>

[15] 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. This means that the Claimant's explanations about the reasons for the delay can have no impact on the result. The General Division cannot grant an extension in the appeal.

[16] I understand that the impact of refusing to grant an extension of time is that the case does not proceed further. In that case, the Claimant does not have the chance to make arguments about how he is entitled to the disability pension.

---

<sup>9</sup> See paragraphs 6 to 8 in the General Division decision.

<sup>10</sup> See paragraph 5 of the General Division decision.

[17] In my view, the Claimant has no reasonable chance of showing that following the law about appeals that are over one year late is a failure to provide fair process. In light of the facts about the length of delay, the General Division does not have the legal authority to give the extension the Claimant wanted, even if it would result in a process that would allow the Claimant's appeal to proceed. The General Division applied the law to the facts. Providing an extension for the reasons the Claimant provides would arguably be an error of law.

[18] There is no unqualified right to make arguments about every fact or factor relevant to the question of eligibility for the disability pension. The Claimant's application was late, so he had a right to make arguments about every fact or factor likely to influence the outcome about whether he would have an extension. The law about extensions of time is a legislated limit on the right to make arguments about a reconsideration decision.

[19] The General Division had a duty to give the Claimant every chance to make his case about whether he was late, how late he was, and what impact that should have on the appeal given the law about extensions of time. However, it did not have a duty in law to give the Claimant every chance to make his case for why he is eligible for the disability pension. The legislation provides the context here for what fairness requires.

[20] The Claimant hasn't raised any arguments on appeal that have a reasonable chance of success. The Claimant has not challenged when he received the reconsideration request. He is past the one-year mark so the General Division must not extend the time under any circumstances. There is no argument here that would justify granting leave (permission) to appeal.

## **Conclusion**

[21] I have refused leave (permission) to appeal. This means that the appeal will not go ahead.

Kate Sellar  
Member, Appeal Division