



Citation: *HB v Minister of Employment and Social Development*, 2022 SST 1049

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

# **Extension of Time and Leave to Appeal Decision**

<b>Applicant:</b>	H. B.
<b>Respondent:</b>	Minister of Employment and Social Development
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<b>Decision under appeal:</b>	General Division decision dated April 14, 2014 (GT-87053)
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<b>Tribunal member:</b>	Neil Nawaz
<b>Decision date:</b>	October 13, 2022
<b>File number:</b>	AD-22-675

## Decision

[1] Permission to appeal is refused. This appeal will not be going forward.

## Overview

[2] The Applicant is a former member of the Canadian Armed Forces. He has applied for a Canada Pension Plan (CPP) disability pension at least five times.<sup>1</sup> On each occasion, the Minister has refused his application. After the third refusal, the Applicant appealed to the Office of the Commissioner of Review Tribunals. In February 2006, the CPP Review Tribunal found that the Applicant was not disabled and dismissed the appeal.

[3] The Applicant has twice applied to have the CPP Review Tribunal's February 2006 decision rescinded or amended:

- In December 2011, the CPP Review Tribunal refused the first application because the Applicant had not identified any new facts; and
- In April 2014, the General Division of the Social Security Tribunal (SST) refused the Applicant's second application because it was statute-barred for lateness.<sup>2</sup>

[4] In September 2022, the Appellant submitted a notice of appeal to the Tribunal's Appeal Division. In his notice, he made the following points:

- He wants to appeal a decision that he thinks was made in the early 2000s;
- He was released from the army in 1992 because of various health conditions, including arthritis, frostbite, alcoholism, and depression;

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<sup>1</sup> A document prepared by the Minister and dated October 24, 2010 indicates that the Applicant applied for the CPP disability pension in March 1993, September 2002, February 2004, January 2008, and May 2010. See GT1-2.

<sup>2</sup> The Office of the Commissioner of Review Tribunals was replaced by the Social Security Tribunal in April 2013.

- The General Division wrongly relied on testimony from his boss, rather than medical evidence from his doctors; and
- His mental health problems are now under control with medication, and that is why he is finally able to make an appeal.

[5] I have decided to refuse the Applicant permission to appeal because his appeal has no reasonable chance of success. That is because his request for permission to appeal comes too late.

## Issues

[6] These are the issues as I see them:

- Was the application for permission to appeal filed on time?
- If not, is an extension of time available?
- If an extension of time is available, has the Applicant raised grounds of appeal that would have a reasonable chance of success?

## Analysis

[7] An appeal can proceed only if the Appeal Division first grants permission to appeal.<sup>3</sup> At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.<sup>4</sup> This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.<sup>5</sup>

[8] However, I don't see an arguable case for any of the Applicant's reasons for appealing.

## **The Applicant did not file his request for permission to appeal on time**

[9] The Applicant's request for permission to appeal leaves me unsure whether he intends to appeal (i) the CPP Review Tribunal's February 2006 decision dismissing his

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<sup>3</sup> See DESDA, sections 56(1) and 58(3).

<sup>4</sup> See DESDA, section 58(2).

<sup>5</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

claim for the disability pension or (ii) the SST General Division's April 2014 refusal to rescind or amend the CPP Review Tribunal's December 2005 decision.

[10] However, the Applicant's appeal cannot succeed, whatever he may have intended.

[11] When the OCRT released the CPP Review Tribunal's decision in February 2006, it advised the Applicant in writing that he had 90 days in which to file an appeal with the Pension Appeal Board (PAB), if he so wished.<sup>6</sup> There is no indication that the Applicant did so. On April 1, 2013, pursuant to the *Jobs, Growth and Long-Term Prosperity Act*, the OCRT and the PAB were abolished and replaced by, respectively, the General Division and the Appeal Division of the SST. Since the Applicant had no outstanding appeals on the date of transition, whatever appeal rights he possessed became governed by the then-new *Department of Employment and Social Development Act* (DESDA).

[12] Under section 57(1)(b) of the DESDA, an application for leave to appeal must be brought to the Appeal Division within 90 days after the day on which the decision was communicated to the applicant. Under section 57(2), the Appeal Division may allow further time to bring an appeal, but in **no case** may an application for leave to appeal be brought more than one year after the day on which the decision is communicated to the applicant.

[13] Here, the CPP Review Tribunal's decision was issued and mailed to the Applicant nearly 17 years ago. The SST General Division's decision was issued and mailed to the Applicant more than eight years ago. In both cases, the Applicant's request for permission to appeal came long after the one-year "hard" deadline for appealing had passed.

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<sup>6</sup> Letter to the Applicant from the OCRT dated February 6, 2006, GT1-394-95.

**I cannot give the Applicant an extension of time**

[14] The Applicant implies that his application requesting permission to appeal was late because he was incapacitated by psychotropic medications prescribed for his mental health problems.

[15] Unfortunately, this explanation does not help the Applicant. The law is strict and unambiguous for appeals that are submitted after a year. While extenuating circumstances may be considered for appeals that come after 90 days but within a year, the wording of section 57(2) of the DESDA all but eliminates scope for a decision-maker to exercise discretion once 365 days have elapsed. The Applicant's reasons for filing his appeal late are therefore rendered irrelevant, as are any other factors.

[16] I regret having to deny the Applicant an avenue of appeal, but I am bound to follow the letter of the law. The Applicant's submissions amount to a plea that I simply waive the filing deadline and examine his submissions on their merits, but I can only exercise such authority as is granted by the Appeal Division's enabling statute. Support for this position may be found in *Canada v Esler*, among other cases, which have held that an administrative tribunal is not a court but a statutory decision-maker and therefore not empowered to provide any form of equitable relief.<sup>7</sup>

**I don't have to determine whether the Applicant has an arguable case**

[17] As the Applicant's application for permission to appeal comes more than one year after the decisions of the CPP Review Tribunal and the SST General Division were communicated to him, I do not need to consider whether his submissions would have a reasonable chance of success on appeal.

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<sup>7</sup> See *Canada (Minister of Human Resources Development) v Esler*, 2004 FC 1567.

## Conclusion

[18] For the above reasons, I find that the Applicant's appeal is statute-barred for being late.

[19] Permission to appeal is therefore refused.



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Member, Appeal Division