



Citation: *JP v Minister of Employment and Social Development*, 2022 SST 1309

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	J. P.
Respondent:	Minister of Employment and Social Development
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Decision under appeal:	General Division decision dated October 12, 2022 (GP-22-1473)
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Tribunal member:	Neil Nawaz
Decision date:	November 17, 2022
File number:	AD-22-786

Decision

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

Overview

[2] The Claimant is a 66-year-old former traffic guard who has a long history of hearing problems. He has been receiving a Canada Pension Plan (CPP) retirement pension since November 2016. In October 2020, he also applied for the CPP disability pension.¹

[3] The Minister initially refused the application because the Claimant had been receiving the CPP retirement pension for more than 15 months.² The Minister also found that the Claimant was ineligible for the post-retirement disability benefit (PRDB) because he did not have a severe and prolonged disability.³

[4] On reconsideration, the Minister maintained her decision to refuse the Claimant the CPP disability pension but reversed her decision on the PRDB. In a letter dated February 26, 2021, the Minister granted the Claimant the PRDB effective August 2020.

[5] The Claimant thought that he should have received more retroactive PRDB payments. On May 17, 2022, the Claimant asked the Minister to reconsider his pension's effective date, pointing to evidence that he had been disabled as early as 2001.⁴ In response, the Minister advised the Claimant that, since she had already issued a reconsideration decision, his next avenue of recourse was an appeal to the Social Security Tribunal.⁵

[6] On August 25, 2022, the Claimant submitted a notice of appeal to the Social Security Tribunal's General Division.⁶ The General Division dismissed the appeal

¹ See Claimant's application for CPP disability benefits date stamped October 1, 2020, GD2-27.

² See Service Canada's letter dated February 26, 2021, GD2-5.

³ See Service Canada's letter dated November 4, 2020, GD2-28.

⁴ See Claimant's request for reconsideration dated May 17, 2022, GD2-9.

⁵ See Service Canada's undated letter, GD2-8. It appears this letter contains a typographical error: it refers to its reconsideration decision letter of "February 26, **2022**" rather than the correct date of February 26, **2021**.

⁶ See Claimant's notice of appeal to the General Division dated August 25, 2022, GD1.

because the Claimant had submitted it more than one year after he had received the Minister's reconsideration letter.

[7] The Claimant then applied to the Tribunal's Appeal Division for permission to appeal.⁷ In his application, he said that the General Division's decision was based on incomplete information. He said that he had already filed an access to information request. He asked the Appeal Division for an extension of time to allow his request to be processed.

[8] I scheduled a pre-hearing teleconference for November 10, 2022. At the teleconference, I asked the Claimant what documents he had requested from the government and what he hoped to prove with them. He replied that he expected to receive phone memos showing that the Minister never sent him the reconsideration decision letter of February 26, 2021.⁸

Issue

[9] There are four grounds of appeal to the Appeal Division. An applicant 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.⁹

[10] An appeal can proceed only if the Appeal Division first grants permission to appeal.¹⁰ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.¹¹ This is a fairly easy test to meet, and it means that claimants must present at least one arguable case.¹²

⁷ See Claimant's application to the Appeal Division dated October 26, 2022, AD1.

⁸ Refer to recording of pre-hearing teleconference dated November 10, 2022.

⁹ See *Department of Employment and Social Development Act* (DESDA), section 58(1).

¹⁰ See DESDA, sections 56(1) and 58(3).

¹¹ See DESDA, section 58(2).

¹² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

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

Analysis

[12] 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.

[13] 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.¹³ The General Division may allow further time to make the appeal, but not more than one year after the day on which the decision was communicated to the claimant.¹⁴

[14] 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. The record shows that the Minister's reconsideration letter was sent to the Claimant on February 26, 2021 and that the Claimant's notice of appeal was not filed at the General Division until August 25, 2022—18 months later.

[15] 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 claim for additional retroactive benefits.

[16] The Claimant insists that he never received the Minister reconsideration letter dated February 26, 2021, even though a copy of the letter is on file and addressed to

¹³ See DESDA, section 52(1)(b).

¹⁴ See DESDA, section 52(2).

his residential address. At the pre-hearing conference, the Claimant said that his access to information request would reveal what he claims were his many unanswered attempts in 2021–22 to determine the status of his request for reconsideration.

[17] However, the General Division already considered the possibility that the Claimant did not receive the Minister’s reconsideration letter. Before issuing its decision, the General Division wrote to the Claimant asking him to specify when he had received the reconsideration letter.¹⁵ The Claimant replied by email, writing, “The date you are looking for can’t be found so going [by] my memory is approximately April or May 2021.”¹⁶ Based on this reply, the General Division gave the Claimant the benefit of the doubt and assumed that he had received the letter on May 31, 2021. Even so, the General Division found that, not having appealed until August 25, 2022, the Claimant had still missed the one-year deadline.¹⁷

[18] The General Division had good reason—the Claimant’s own words—to find that the Claimant received the Minister’s reconsideration letter by May 2021. The Claimant now says that proof is coming that he never actually received the letter, but even if his access to information request produces evidence to that effect, I still won’t be able to consider it. That is because the Appeal Division has a mandate limited to considering errors that the General Division might have made. The Appeal Division can’t reconsider the evidence already on file, and it can’t consider new evidence that was not before the General Division.¹⁸ In any event, inquiring about a possible appeal or making attempts to appeal, are not the same things as actually filing a complete appeal in the right forum.

[19] 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

¹⁵ See General Division’s letter to the Claimant dated October 3, 2022, GD3.

¹⁶ See Claimant’s email dated October 6, 2022, GD4.

¹⁷ See General Division decision, paragraphs 5–7.

¹⁸ As discussed at the pre-hearing conference, the Claimant has an option under section 66 of the DESDA to apply to the General Division to rescind or amend its decision on the basis of new facts. However, Parliament has repealed this section, and it will be formally deactivated in the near future.

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.¹⁹

Conclusion

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

[21] Permission to appeal is refused.



Member, Appeal Division

¹⁹ See *Pincombe v Canada (Attorney General)*, [1995] F.C.J. No. 1320 and *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.