



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *TO v Minister of Employment and Social Development*, 2020 SST 1095

Tribunal File Number: GP-20-1571

BETWEEN:

T. O.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Raymond Raphael

CLAIMANT REPRESENTED BY: Navneet Jasmal

DATE OF DECISION: December 7, 2020

DECISION

[1] The time for appeal is not extended.

OVERVIEW

[2] This case involves a late appeal to the Tribunal of the Minister's decision to refuse to extend the time for the Claimant to request reconsideration.

[3] The Claimant applied for the *Canada Pension Plan* (CPP) disability benefit in September 2018.¹ The Minister denied the application on January 11, 2019.² The Minister received the Claimant's request for reconsideration on December 20, 2019, which was after the 90-day time limit.³ On February 5, 2020, the Minister refused to extend the time For the Claimant to apply for reconsideration.⁴ The Claimant appealed to the Social Security Tribunal (Tribunal) on October 21, 2020⁵, beyond the statutory 90-day time limit.⁶

ISSUE

[4] I must decide if the time for the Claimant to appeal to the Tribunal should be extended.

ANALYSIS

[5] The Claimant filed her appeal to the Tribunal after the 90-day time limit. The Minister's reconsideration decision was dated February 5, 2020. I assume the Minister sent the reconsideration decision to the Claimant by mail. Mail in Canada is usually received within 10 days. I therefore find that the decision was communicated to the Claimant by February 17, 2020.⁷ The Claimant had until May 18, 2020 to file an appeal. However, she did not file her appeal until October 21, 2020.

¹ GD2-106

² GD2-97

³ GD2-85

⁴ GD2-74

⁵ GD1-1

⁶ Paragraph 52(1)(b) of the *Department of Employment and Social Development Act* (DESD Act)

⁷ February 15, 2020 was a Saturday.

[6] In deciding whether to allow further time to appeal, I considered and weighed the four factors set out in the *Gattellaro* decision.⁸ The overriding consideration is that the interests of justice be served.⁹

[7] The Claimant stated that she was unable to submit her appeal to the Tribunal within the 90-day time because of COVID-19 measures and her medical conditions. She suffers from chronic pain, headaches, physical pain, and psychological issues.¹⁰

[8] I am satisfied the Claimant had a continuing intention to pursue the appeal and a reasonable explanation for her delay in doing so. I am also satisfied that there would be no prejudice to the Minister if the matter were heard on its merits.

[9] However, in this case, I have placed the greatest weight on the fact that the Claimant does not have an arguable case.

[10] Determining whether there is an arguable case does not involve determining the merits of the case. Whether there is an arguable case is similar to whether the case has a reasonable chance of success.¹¹

[11] The Claimant is requesting an extension of time to apply for a reconsideration of the Minister's denial of her application for a CPP disability pension. In order to succeed on her appeal she must establish that the Minister did not exercise its discretion judicially when it refused to extend the time for her to request reconsideration.

[12] For the reasons that follow, I have determined that the Claimant does not have an arguable case on the appeal.

⁸ *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883

⁹ *Canada (Attorney General) v. Larkman*, 2012 FCA 204

¹⁰ GD1-2

¹¹ *Canada (Attorney General) v. Zakaria*, 2011 FC 136

Why the Claimant does not have an arguable case on the appeal

[13] The decision by the Minister to grant or refuse a late reconsideration request is a discretionary decision. The Minister must exercise its discretion judicially.¹²

[14] A discretionary power is not exercised judicially if it can be established that the decision-maker:

- acted in bad faith,
- acted for an improper purpose or motive,
- took into account an irrelevant factor,
- ignored a relevant factor, or
- acted in a discriminatory manner.¹³

[15] It is not the Tribunal's role on the appeal to determine if the Minister made the correct determination. Its role is to determine whether it exercised its discretion in a judicial manner. The Claimant has the burden of proof to establish that the Minister failed to do so.

[16] I have assumed the denial letter was sent to the Claimant by mail. Mail in Canada is usually received within 10 days. I therefore find that the reconsideration decision was communicated to the Claimant by January 21, 2019. She had until April 22, 2019 to request reconsideration.¹⁴ The Minister did not receive her request for reconsideration until December 20, 2019.¹⁵

[17] Because the Minister did not receive the Claimant's request for reconsideration until December 20, 2019, the Minister may only allow a longer period to request the reconsideration if

¹² *Canada (A.G.) v Uppal* 2008 FCA 388

¹³ *Canada (A.G.) v. Purcell*, [1996] 1 FCR 644

¹⁴ Section 81 of the CPP

¹⁵ GD2-85

it is satisfied that 1) there is a reasonable explanation for requesting a longer period, and 2) the Claimant has demonstrated a continuing intention to request reconsideration.¹⁶

[18] Both factors must be met.¹⁷

[19] In its decision refusing to extend the time for reconsideration¹⁸, the Minister considered both of these factors.

[20] The letter dated January 11, 2019 denying the Claimant's request for a disability pension, provided information on what the Claimant should do if she disagreed with the decision: she must ask the Minister in writing to reconsider the decision within 90 days from when she received the letter.¹⁹

[21] The Minister concluded that the Claimant did not establish a reasonable explanation for the delay. On November 13, 2019 and again on December 13, 2019, the Minister wrote to the Claimant and her representative. The Minister requested information including an explanation for the delay in requesting a reconsideration and how the Claimant kept Service Canada informed of her intent to make this request.²⁰ The Minister wrote these letters after it received letters dated October 23 and 24, 2019 from the Claimant's representative. Those letters requested copies of the Claimant's CPP disability application file and statement of contributions.²¹ The Claimant did not respond. She did not provide any explanation for her lengthy delay in requesting reconsideration. Considering that the Claimant did not provide any explanation for the delay, the Minister's conclusion that she had not provided a reasonable explanation for the delay was reasonable.

[22] The Minister also concluded that the Claimant had not demonstrated a continuing intention to request reconsideration. The Claimant's first contact with Service Canada after the January 11, 2019 denial letter was the October 23 and 24, 2019 correspondence from her representative. Considering the 8-month delay between the decision and the request for

¹⁶ Subsection 74.1(3) of the CPP Regulations

¹⁷ *Lazure v Attorney General of Canada* 2018 FC 467, paragraph 25

¹⁸ GD2-76 to 78

¹⁹ GD2-97 to ii

²⁰ GD2-91 to 94.

²¹ GD2-100 to 101

documents, the Minister's conclusion that the Claimant had not demonstrated a continuing intention to request reconsideration was reasonable.

[23] There is no evidence that the Minister acted in bad faith or acted with an improper purpose or motive. There is no evidence that the Minister considered any irrelevant evidence.

[24] I find that the Claimant does not have a reasonable chance of successfully arguing that the Minister did not act judicially.

CONCLUSION

[25] The Claimant has demonstrated a continuing intention to pursue the appeal, a reasonable explanation for the delay, and it does not appear that the Minister will be prejudiced should an extension of time be allowed. These factors favour allowing an extension of time to file the notice of appeal.

[26] On the other hand, there is no arguable case before the Tribunal. This factor overrides the other factors since there is no purpose in allowing an extension of time to appeal where there is no reasonable chance of success. Allowing an extension of time for an appeal that is bound to fail is not in the interests of justice.

[27] I am refusing to extend the time for appeal.

[28] My decision relates only to whether the Claimant has a reasonable chance of successfully arguing that the Minister did not act judicially when it determined that it should not extend the time for the Claimant to a request a reconsideration. It does not decide whether the Claimant is able to meet the CPP disability pension requirements. The Claimant can decide to submit a new application for CPP disability.

Raymond Raphael
Member, General Division - Income Security