



Citation: *DP v Minister of Employment and Social Development*, 2023 SST 806

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

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

**Applicant:** D. P.  
**Representative:** S. T.

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

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**Decision under appeal:** General Division decision dated September 13, 2022  
(GP-21-1409)

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**Tribunal member:** Kate Sellar

**Decision date:** **June 15, 2023**

**File number:** AD-23-350

## Decision

[1] An extension of time to apply to the Appeal Division is granted. Leave (permission) to appeal is refused. The appeal will not proceed.

## Overview

[2] D. P. (Claimant) has applied for a *Canada Pension Plan* (CPP) disability pension many times. This appeal is about his third application.

[3] On April 20, 2015, the Appellant submitted his first application. The Minister of Employment and Social Development (Minister) refused the application initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division dismissed the appeal in March 2018.<sup>1</sup>

[4] Before the Claimant received that March 2018 decision on the first application, he submitted a second application on September 24, 2015. So the General Division decision on the first application considers the evidence in both the first and the second applications. After the Tribunal decided his first application, the Minister refused the second application initially and on reconsideration.

[5] On September 8, 2020, the Claimant submitted his third application. The Minister refused it initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division decided on September 13, 2022 that the Claimant's appeal on the third application couldn't proceed because it was already decided by the General Division in the March 2018 decision (on the first application).

## Issues

[6] The issues in this appeal are:

- a) Was the Claimant's request to the Appeal Division for permission to appeal the September 13, 2002 General Division decision late?

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<sup>1</sup> That decision is at GD2R-52 to GD2R-75.

- b) If so, should I extend the time for filing the application?
- c) If so, is there an arguable case that the General Division made any error that would justify granting the Claimant permission to appeal?
- d) Does the request for permission to appeal set out evidence that wasn't presented to the General Division that would justify granting the Claimant permission to appeal?

## **Analysis**

### **The application was late**

[7] The General Division decision is dated September 13, 2022. The Claimant stated that he received it on December 23, 2022.<sup>2</sup>

[8] The Claimant had 90 days from the day the General Division communicated its decision to ask for permission to appeal.<sup>3</sup> The Claimant appealed more than 90 days after December 23, 2022, on April 12, 2023.<sup>4</sup>

[9] The Claimant's application was late.

### **I'm extending the time for filing the application**

[10] When deciding whether to grant an extension of time, I must consider whether the Claimant has a reasonable explanation for why the application is late.<sup>5</sup>

[11] The Claimant's representative is his spouse. She appears to be genuinely confused about the Claimant's multiple applications and appeals.<sup>6</sup> It seems to me that she is having difficult time keeping track of next steps, which I find to be reasonable.

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<sup>2</sup> See AD1-2.

<sup>3</sup> See section 57(1)(b) of the *Department of Employment and Social Development Act (Act)*.

<sup>4</sup> See AD1.

<sup>5</sup> See section 27(2) of the *Social Security Tribunal Rules of Procedure*.

<sup>6</sup> See AD01B.

## I'm not giving the Claimant permission to appeal

[12] I can give the Claimant permission to appeal if their application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact; or
- made an error in applying the law to the facts.<sup>7</sup>

[13] I can also give the Claimant permission to appeal if their application sets out evidence that wasn't presented to the General Division.<sup>8</sup>

[14] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

### – The Claimant hasn't raised an arguable case.

[15] The Claimant hasn't raised an arguable case for any error that would justify granting permission to appeal. The Claimant's representative argues that the Claimant's medical evidence shows that he has a severe and prolonged disability under the CPP.<sup>9</sup> At this point, he has end-stage liver disease and dementia.

[16] The General Division decision that the Claimant appeals from isn't about whether the Claimant is entitled to the disability pension. The General Division explained that first, it had to decide whether to apply **res judicata** (the rule against deciding something that's already been decided) to the Claimant's appeal.

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<sup>7</sup> See sections 58.1(a) and (b) of the Act.

<sup>8</sup> See section 58.1(c) of the Act.

<sup>9</sup> See section 42(2)(a) of the *Canada Pension Plan* (CPP) for the definition of a severe and prolonged disability. The Claimant's arguments are at AD1-4 and AD01B.

[17] The General Division applied *res judicata* to the Claimant's appeal. The General Division decided that the issues and the parties involved in the appeal before it in 2022 were the same as they were in the 2018 General Division decision on his first application. That 2018 General Division decision was final, and the Claimant's didn't appeal that decision to the Appeal Division.<sup>10</sup>

[18] The General Division also considered in some detail whether it would be unjust to apply the rule against deciding something that's already been decided.<sup>11</sup> The General Division member reviewed the recording of the hearing and addressed the Claimant's arguments about whether the hearing process was fair. The General Division went on to consider some additional possible reasons not to apply the rule, but none applied to the Claimant's appeal.

– **No new evidence that would justify granting permission to appeal.**

[19] The Claimant didn't provide any new evidence that would justify granting permission to appeal the General Division's decision about the rule against deciding something that's already been decided.

[20] I've reviewed the written record and am satisfied that there's no other reason to grant the Claimant permission to appeal.<sup>12</sup>

[21] I understand that the Claimant's medical situation is serious. However, I cannot grant the Claimant permission to appeal the General Division's decision. I see no possible error in the way the General Division applied the law about *res judicata* to the Claimant's situation. The Claimant's eligibility for the CPP disability pension was decided in March 2018.

[22] I cannot grant the Claimant permission to appeal.

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<sup>10</sup> See paragraphs 18 to 21 in the General Division decision.

<sup>11</sup> See paragraphs 22 to 29 in the General Division decision.

<sup>12</sup> See *Karadeolian v Canada (Attorney General)*, 2016 FC 615 for more on the Appeal Division's role in permission to appeal cases.

## **Conclusion**

[23] An extension of time is granted. Permission to appeal is refused. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division