



Citation: *EA v Minister of Employment and Social Development*, 2023 SST 1161

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. A.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated June 29, 2023
(GP-23-919)

Tribunal member: Kate Sellar

Decision date: **August 24, 2023**

File number: AD-23-716

Decision

[1] I'm refusing leave (permission) to appeal. The appeal will not go ahead. These are the reasons for my decision.

Overview

[2] E. A. (Claimant) applied for a *Canada Pension Plan* (CPP) disability pension. The Minister refused her application. On January 17, 2022, the Claimant asked the Minister to reconsider its decision. On March 10, 2022, the Minister wrote a reconsideration letter to the Claimant.¹ In the letter, the Minister maintained its decision to refuse the Claimant's application.

[3] The Claimant appealed the reconsideration decision to this Tribunal on May 30, 2023.² The General Division decided that the appeal couldn't go ahead because the Claimant filed the appeal more than one year after the Minister communicated its reconsideration decision to her.

Issues

[4] The issues in this appeal are:

- a) Can it be argued that the General Division failed to provide the Claimant with a fair process?
- b) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal.

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

¹ See GD2-11.

² See GD1.

- 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;
- made a mixed error of law and fact.³

[6] I can also give the Claimant permission to appeal if their application sets out evidence that wasn't presented to the General Division.⁴

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

It cannot be argued that the General Division failed to provide the Claimant with a fair process.

[8] The Claimant says that she received the reconsideration decision on March 10, 2022.⁵ She explains that she went to a legal aid clinic for help around March 25, 2022. They mailed the application for her on March 30, 2022. In fairness, she wants a chance to make arguments about why is eligible for the CPP disability pension.

[9] There's no argument here that the General Division failed to provide the Claimant with a fair process.

[10] What fairness requires depends on the context of each case.⁶ The General Division had evidence about when the Claimant received the Minister's reconsideration letter (March 10, 2022), and when the Tribunal received the Claimant's application (May 30, 2023).

³ See section 58.1(a) and (b) of the *Department of Employment and Social Development Act* (Act).

⁴ See section 58.1(c) of the Act.

⁵ See AD1-5.

⁶ See *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC).

[11] The General Division must follow the law. The law says that in **no case** can the claimant appeal a reconsideration decision more than a year after the Minister communicates that decision.⁷

[12] The General Division didn't have the legal authority to provide the Claimant with an extension of time past that one-year deadline. The Claimant argued that she mailed her application on time, but the only application the Tribunal received (and therefore had the power to decide about) was the May 30, 2023 application. That application is more than a year late.

[13] Given the context, there's no evidence that the General Division failed to provide the Claimant with a fair process.

The Claimant hasn't provided new evidence that would justify granting permission to appeal.

[14] The Claimant hasn't provided any new evidence that would justify me giving her permission to appeal. The affidavit she attached from the legal aid clinic is not new. It was already in the record at the General Division.⁸

[15] I've reviewed the record and am satisfied that the General Division didn't ignore or misunderstand the evidence about when it received the appeal and how late that appeal was.⁹

Conclusion

[16] I've refused the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division

⁷ See section 52(2) of the Act.

⁸ See GD1-2.

⁹ For more on the need for the Appeal Division to review the evidence and satisfy itself that way, see the Federal Court's decision in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.