



Citation: *DV v Minister of Employment and Social Development*, 2023 SST 1174

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: D. V.

Respondent: Minister of Employment and Social Development
Representative: Rebekah Ferriss

Decision under appeal: General Division decision dated November 21, 2022
(GP-21-1577)

Tribunal member: Kate Sellar

Type of hearing: In Writing

Decision date: **August 28, 2023**

File number: AD-23-272

Decision

[1] The appeal will not go ahead. These are the reasons for my decision.

Overview

[2] D. V. (Claimant) applied for a *Canada Pension Plan* (CPP) disability pension on April 29, 2020. The Minister of Employment and Social Development (Minister) denied the application initially and on reconsideration. The Claimant had already been receiving a CPP retirement pension since October 2015. The Claimant appealed to this Tribunal.

[3] On November 21, 2022, the General Division dismissed the Claimant's appeal without a hearing. That process is called summary dismissal. The General Division found that the law didn't allow the Claimant to cancel his retirement pension and start collecting a disability pension instead.¹

[4] The Claimant filed an appeal to the Appeal Division. I held two case conferences. I explained what the law says about appeals from summary dismissal decisions. I invited the parties to provide me with arguments about whether the appeal is too late to go ahead.²

Issues

[5] This decision focuses on two issues:

- a) Was the Claimant's appeal to the Appeal Division late?
- b) Can I give the Claimant more time for filing the application?

¹ A person can only cancel a retirement pension in favour of a disability pension if they're "deemed" disabled before the retirement pension started. The earliest a person can be "deemed" disabled is 15 months before the day the Minister received the disability application. See paragraph 30 in the General Division decision, and sections 66.2(1.1) and 42(2)(b) of the *Canada Pension Plan* (CPP).

² See AD5 and AD8.

Analysis

The application was late

[6] On December 5, 2022, important changes were made to the law that governs the Tribunal's procedures.³ Among those changes, Parliament removed the General Division's power to summarily dismiss an appeal.⁴ For people who had already received a summary dismissal decision from the General Division, it set a new deadline for filing an application to the Appeal Division: March 6, 2023.⁵

[7] The Tribunal received the Claimant's appeal on March 16, 2023, so it was late.⁶

I cannot give the Claimant more time to file his appeal

[8] Although the Claimant's appeal was only 10 days late, I don't have the power to give him more time to file his application. When Parliament changed the law, it did not give the Appeal Division any flexibility to accept late applications from summary dismissal decisions. The law says that the appeal **must** be brought by the deadline, and there is no reference to any situation in which the Tribunal might decide to waive or extend that deadline.

[9] The Minister argues that the Claimant hasn't met any of the criteria for an extension of time. Those criteria come from a Federal Court of Appeal case called *Larkman*.⁷

[10] I cannot consider granting an extension of time based on the *Larkman* criteria in this case. A plain reading of the legislation states that the appeal **must** be brought before March 6, 2023. The *Larkman* case describes criteria that can be used when exercising a discretionary power to give a person more time to appeal. However, the

³ See Part 4, Division 20 of the *Budget Implementation Act, 2021, No. 1*.

⁴ See section 224 of the *Budget Implementation Act, 2021, No. 1*.

⁵ This is 90 days after December 5, 2022: see section 240(1) of the *Budget Implementation Act, 2021, No. 1* and PC 2022-1266.

⁶ See AD1.

⁷ See *Larkman v Canada (Attorney General)*, 2012 FCA 204.

law doesn't give me any discretionary powers to give the Claimant more time to appeal the General Division decision.

[11] The Claimant has raised a series of issues that explain why he was late in applying for a disability pension. I cannot address any of those issues because my focus needs to be only on whether the application to the Appeal Division was late, and whether I can give the Claimant more time to appeal.

[12] The application was late. I cannot give the Claimant more time to appeal. There is nothing else left that I have the power to decide for the parties in this appeal.

Conclusion

[13] The Claimant's appeal was late and cannot go ahead.

Kate Sellar
Member, Appeal Division