



Citation: *KC v Minister of Employment and Social Development*, 2023 SST 1366

Social Security Tribunal of Canada Appeal Division

Extension of Time Decision

Applicant: K. C.
Representative: Leanne Hynes

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated April 26, 2023
(GP-23-10)

Tribunal member: Kate Sellar

Decision date: **October 10, 2023**

File number: AD-23-848

Decision

[1] I'm refusing to give the Claimant an extension of time to apply to the Appeal Division. The application will not go ahead. These are my reasons.

Overview

[2] K. C. (Claimant) applied for a *Canada Pension Plan* (CPP) disability pension. The Minister of Employment and Social Development (Minister) refused her application initially and on reconsideration. The reconsideration decision letter is dated December 8, 2020.¹ The Claimant appealed to the General Division of this Tribunal on December 28, 2022.² The General Division dismissed the Claimant's appeal because she filed it more than one year after the Minister communicated the reconsideration decision to her.³

[3] The Claimant asked for permission to appeal to the Appeal Division.

Issues

[4] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) Should I extend the time for filing the application?

Analysis

The application to the Appeal Division was late

[5] The General Division decision is dated April 26, 2023. The Claimant provided the Appeal Division with the cover letter she received by email from the General Division dated the same day as the decision.⁴

¹ See GD2-5.

² See the timestamp at GD1-1.

³ See section 52(2) of the *Department of Employment and Social Development Act*.

⁴ See AD01A-2.

[6] The Claimant had 90 days from April 26, 2023 to file her application to the Appeal Division.

[7] The Claimant filed her application to the Appeal Division on September 1, 2023. Her application to the Appeal Division was past the 90-day deadline: it was late.

I'm not extending the time for filing the application at the Appeal Division

[8] The Appeal Division wrote to the Claimant on September 18, 2023, asking her to confirm when she received the General Division decision. The letter asked the Claimant to explain why there was a delay in receiving the General Division decision (if there was such a delay). The letter also asked the Claimant to explain why the application to the Appeal Division was late, and to explain why her explanation was reasonable. The letter gave the Claimant until October 2, 2023 to respond. The Appeal Division did not receive a response.

[9] Since I have no explanation for why the Claimant was late, I cannot give the Claimant an extension of time for her application to the Appeal Division.

Appealing General Division decisions

[10] Even if I had extended the time for the Claimant to appeal, I must follow the law about giving permission to appeal. The law says that I can give permission to appeal a General Division decision if there's 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 applying the law to the facts.⁵

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

[12] The Claimant didn't raise any arguments about any error in the General Division decision or its process, and she didn't set out new evidence that was relevant to the question the General Division decided. So even if I had extended the time for her late appeal to the Appeal Division, I didn't have any arguments from the Claimant to consider that would lend support for her request for permission to appeal.

[13] When an appeal to the General Division is more than a year past the day the Minister communicated its decision to the Claimant, there are no exceptions, the appeal cannot go ahead.⁷ The General Division made a finding that the Claimant received the reconsideration decision around when it was issued in December 2020. It took the Claimant well over a year to appeal to the General Division, so the General Division decided it could not go ahead with the appeal.

Conclusion

[14] I have refused to give the Claimant an extension of time to apply to the Appeal Division. This means that the application will not go ahead.

Kate Sellar
Member, Appeal Division

⁵ See sections 58.1(a) and (b) of the *Department of Employment and Social Development Act* (the Act).

⁶ See section 58.1(c) of the Act.

⁷ See section 52(2) of the Act.