



Citation: *BS v Minister of Employment and Social Development*, 2023 SST 1441

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: B. S.
Representative: Paul Barrafato

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated July 20, 2023
(GP-23-872)

Tribunal member: Kate Sellar

Decision date: **November 2, 2023**

File number: AD-23-964

Decision

[1] I've refused to give the Claimant Leave (permission) to appeal. The appeal will not go ahead. These are the reasons for my decision.

Overview

[2] B. S. (Claimant) applied for a *Canada Pension Plan* (CPP) disability benefit on July 30, 2019. The Minister of Employment and Social Development (Minister) refused his application. He asked the Minister to reconsider. On March 28, 2022, the Minister reconsidered its decision and refused the application again.

[3] The Claimant appealed the reconsideration decision to this Tribunal on May 12, 2023. The General Division found that the appeal could not go forward because it was more than a year late.

Issues

[4] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error that would justify giving the Claimant permission to appeal?
- b) Does the application set out evidence that wasn't presented to the General Division that would justify granting permission to appeal?

I'm not giving the Claimant permission to appeal

[5] I can give the Claimant permission to appeal if his 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 applying the law to the facts.¹

[6] I can also give the Claimant permission to appeal if his application sets out evidence that wasn't presented to the General Division.²

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

No arguable case for an error by the General Division

[8] The Claimant argues that about six months after the Minister communicated its decision on reconsideration, the Claimant had a psychological assessment and was found to lack capacity. The assessment showed that the Claimant was unable to understand and appreciate the information needed to manage his personal, legal, and financial affairs. The Claimant's representative says that when the Claimant appealed to the General Division on May 12, 2023, he was self-represented and did not have capacity.

[9] The Claimant hasn't raised an arguable case for any error by the General Division. The General Division explained that if a claimant disagrees with a reconsideration decision, they must appeal to the Tribunal within 90 days after the Minister communicated its decision.³

[10] If the claimant appeals after the deadline, the General Division can give them more time (accept the late appeal). But **in no case** can the claimant appeal a reconsideration decision more than one year after the Minister communicated it.⁴

¹ See section 58.1(a) and (b) in the *Department of Employment and Social Development Act (Act)*.

² See section 58.1(c) in the Act.

³ See section 52(1)(b) in the Act.

⁴ See section 52(2).

[11] The Claimant's appeal to the General Division was late. The Claimant filed his appeal over a year after the Minister communicated its decision. The Claimant has not made any argument that suggests that the Claimant did not receive the Minister's reconsideration letter in a timely way. In no case can a Claimant appeal after that one-year mark. The legislation doesn't discuss or anticipate the General Division accepting an appeal after the one-year deadline.

[12] The Claimant's reason for the delay may be reasonable and well documented, but the Claimant hasn't identified any path in law that the Tribunal should have followed that would justify accepting the appeal after the one-year mark. The legislation says that in no case can the General Division allow an appeal to go ahead when it is filed more than a year after the Minister communicates the reconsideration decision. The Claimant hasn't raised an arguable case for an error by the General Division about whether the Claimant was more than a year late. The Claimant hasn't raised an argument about how his case could form an exception to the law about late appeals.

No new relevant evidence that would justify permission to appeal

[13] In support of the request for permission to appeal, the Claimant has attached a medical-legal report from a psychologist about the Claimant's capacity.⁵

[14] The General Division didn't have this evidence. However, the evidence is not relevant to the question about whether the Claimant was more than a year late, so it cannot form the basis for permission to appeal.

[15] The Claimant seems to concede that his application was more than a year late, and this letter provides evidence for the explanation. But since law says that **in no case** can claimants appeal after more than a year, the explanation for the delay isn't relevant. I cannot grant permission to appeal based on new evidence that isn't relevant to the issue the Tribunal needs to decide.

⁵ See AD1-9 and following.

Conclusion

[16] I've refused to give the Claimant permission to appeal. This means that the appeal will not go ahead to the next step.

Kate Sellar
Member, Appeal Division