



Citation: *DL v Minister of Employment and Social Development*, 2024 SST 29

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

# **Leave to Appeal Decision**

**Applicant:** D. L.  
**Representative:** L. C.

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

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**Decision under appeal:** General Division decision dated December 6, 2023  
(GP-23-1877)

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**Tribunal member:** Kate Sellar

**Decision date:** January 10, 2024

**File number:** AD-23-1116

## Decision

[1] I'm refusing to give the Claimant leave (permission) to appeal. The appeal won't go ahead to the next step. These are the reasons for my decision.

## Overview

[2] D. L. (Claimant) applied for a Canada Pension Plan (CPP) disability benefit on November 23, 2021. The Minister of Employment and Social Development (Minister) refused her application. She asked it to reconsider. In a reconsideration letter dated September 13, 2022, the Minister maintained its initial decision refusing the application.<sup>1</sup>

[3] The Claimant appealed to this Tribunal on November 10, 2023.<sup>2</sup> The General Division did not allow the appeal to go ahead because the Claimant filed the appeal more than a year after the Minister communicated its reconsideration decision. The Claimant asked for permission to appeal to the Appeal Division.

## Issues

[4] The issues in this appeal are:

- a) Could the General Division have made an error of fact by ignoring important evidence about why the Claimant was late?
- 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 the application raises an arguable case that the General Division:

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<sup>1</sup> See GD2-4.

<sup>2</sup> 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; or
- made an error applying the facts to the law.<sup>3</sup>

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

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

**The Claimant hasn't shown an arguable case that the General Division made an error of fact by ignoring important evidence.**

[8] There's no arguable case that the General Division made an error of fact by ignoring important evidence. The Claimant argues that the General Division ignored the bad advice a provincial government employee gave her about waiting before she appealed.<sup>5</sup>

[9] The General Division decision explains that **in no case** can the Tribunal proceed with an appeal that a claimant files more than a year after the Minister communicates its decision.<sup>6</sup> The Claimant didn't disagree about whether she was more than a year late. The General Division had no option to extend that deadline based on the bad advice she explained that she received from a provincial government employee.

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<sup>3</sup> See sections 58.1(a) and (b) in the *Department of Employment and Social Development Act*.

<sup>4</sup> See section 58.1(c) in the Act.

<sup>5</sup> See AD1-4 and AD1-10 and following.

<sup>6</sup> See paragraph 8 in the General Division decision, which describes section 52(2) of the Act.

[10] I cannot find that the General Division may have made an error by ignoring the evidence about why the Claimant was late. There was no option in law for the General Division to grant the extension, regardless of the reason the Claimant needed it.

**The Claimant hasn't set out any new evidence that would justify granting permission to appeal.**

[11] The Claimant provided a functional capacity assessment dated July 28, 2023.<sup>7</sup> I think that this is evidence that wasn't presented to the General Division. However, since the Claimant filed the application to the General Division more than a year after the Minister communicated its decision, the assessment isn't relevant to the question I must decide and therefore cannot form the basis for giving permission to appeal.

[12] I've reviewed the record. I'm satisfied that the General Division didn't ignore or misunderstand the evidence about when the Minister communicated its decision or when the Claimant filed the appeal.<sup>8</sup>

## **Conclusion**

[13] I've refused the Claimant permission to appeal. This means that the appeal will not go ahead.

Kate Sellar  
Member, Appeal Division

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<sup>7</sup> See AD1-15 and following.

<sup>8</sup> For more on the need for this kind of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*,