



Citation: *JR v Minister of Employment and Social Development*, 2024 SST 18

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. R.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated August 17, 2023
(GP-23-816)

Tribunal member: Kate Sellar

Decision date: January 4, 2024

File number: AD-23-1024

Decision

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

Overview

[2] J. R. (Claimant) applied for a *Canada Pension Plan* (CPP) disability pension in May 2021. The Minister of Employment and Social Development (Minister) refused his application. The Claimant asked the Minister to reconsider. On December 17, 2021, the Minister wrote a reconsideration decision letter confirming the decision to refuse the disability pension.¹

[3] The Claimant appealed to this Tribunal on May 5, 2023.²

Issues

[4] The issues in this appeal are:

- a) Is there an arguable case that the General Division made any error in its decision about the Claimant's late appeal?
- 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 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;

¹ See GD2-7.

² See GD1.

- made an error of law;
- made an error of fact; or
- made an error applying the law to the facts.³

[6] I can also give the Claimant permission to appeal if the 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.

There's no arguable case that the General Division made an error about the Claimant's late appeal

[8] The Claimant says that the delay in filing an appeal at the General Division was not all his fault, and that there was a disruption in the mail service at the beginning of the process. He says that some original papers were lost and came in late, but ultimately the Minister has all the documents related to the problem with his vision that caused him to apply for the disability pension.⁵

[9] The Claimant hasn't raised an arguable case for an error by the General Division.

[10] Consistent with the General Division's decision, the Claimant had 90 days from when the Minister communicated its reconsideration decision to appeal to the General Division.⁶ If a claimant is past the 90 days, the General Division can give a claimant an extension of time to appeal. However, **in no case** can a claimant appeal a reconsideration decision more than one year after the Minister communicated it to the Claimant.⁷

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

⁴ See section 58.1(c) in the Act.

⁵ See AD1-4.

⁶ See section 52(1) in the Act.

⁷ See section 52(2) in the Act.

[11] The General Division considered the Claimant's position that he didn't receive the reconsideration letter until "months after the date printed on the letter" because there was a disruption with the mail service.⁸ The General Division also noted that the Minister wrote to the Claimant again on August 22, 2022, refencing the duplicate medical report they received in April 2022 and the reconsideration decision from December 17, 2021.

[12] The General Division found that even accounting for a matter of months after December 17, 2021, the Claimant was past the one-year deadline. In that case, the General Division didn't have the discretion to give the Claimant an extension of time.

[13] The Claimant hasn't raised any argument about an error in the General Division's decision that has a reasonable chance of success. The General Division's decision already accounts for the mail delay, which is the issue the Claimant raises with the General Division's decision. The General Division didn't have the discretion to extend the time for filing past a year.

[14] I have reviewed the record. I'm satisfied that the General Division didn't misunderstand the evidence about the mail processing delay.⁹ The General Division concluded that even including the mail delay, the Claimant was past the one-year deadline. In no case can an appeal go ahead when the claimant files it after the one-year deadline.

Next Steps

[15] The documents in the Claimant's appeal suggested that his coverage period didn't end until December 31, 2023. And although one of the reasons he was denied for the disability pension in the past was that he was still working, he says that he is no longer working now.

⁸ See GD1-6, and paragraphs 10 and 11 in the General Division decision.

⁹ This kind of review of the evidence is anticipated by the Federal Court in a case *called Karadeolian v Canada (Attorney General)*, 2016 FC 615.

[16] The Claimant may wish to reapply for the Canada Pension Plan (CPP) disability pension by filing a new application form.

Conclusion

[17] Permission to appeal is refused. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division