



Citation: *TK v Minister of Employment and Social Development*, 2024 SST 302

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

# **Leave to Appeal Decision**

**Applicant:** T. K.

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

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**Decision under appeal:** General Division decision dated December 6, 2023  
(GP-23-1860)

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**Tribunal member:** Kate Sellar

**Decision date:** **March 22, 2024**

**File number:** AD-24-183

## Decision

[1] I'm refusing to give the Claimant (T. K.) leave (permission) to appeal. The appeal will not proceed. These are the reasons for my decision.

## Overview

[2] The Claimant applied for a Canada Pension Plan (CPP) disability pension on January 16, 2017. The Minister of Employment and Social Development (Minister) refused her application initially and in a reconsideration letter dated December 31, 2018.<sup>1</sup> The Claimant appealed to this Tribunal on November 2, 2023.<sup>2</sup>

[3] The General Division decided that the Minister communicated the reconsideration decision to the Claimant by regular mail by January 7, 2019.<sup>3</sup> As a result, the Claimant filed her application several years after the Minister communicated its decision. In no case can the General Division proceed with an application that is filed more than a year after the Minister communicates its reconsideration decision.<sup>4</sup> Accordingly, the General Division did not proceed further with the appeal.

## Issues

[4] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of fact by ignoring the reasons why the Claimant filed the application in 2023?
- b) Does the application set out evidence that wasn't presented to the General Division?

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<sup>1</sup> See GD2-9.

<sup>2</sup> See GD1.

<sup>3</sup> See paragraph 10 in the General Division decision.

<sup>4</sup> See section 52(2) of the *Department of Employment and Social Development Act* (Act).

## **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:

- 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.<sup>5</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>6</sup>

[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 of fact**

[8] The Claimant argues that the General Division made an error of fact by ignoring the evidence about why the Claimant didn't open and read the reconsideration decision until sometime after December 2019. The Claimant says the General Division made an error of fact by finding that the Minister communicated the reconsideration decision by January 7, 2019. She says in this way, the General Division proceeded in a way that was unfair (by reaching a decision that she disagrees with).

[9] The Claimant explained that she and her children were displaced from the family home. They had no way of getting any mail at that address when the Minister issued the reconsideration letter. When she returned in December 2019, the home was neglected

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<sup>5</sup> See section 58.1(a) and (b) in the Act.

<sup>6</sup> See section 58.1(c) of the Act.

and in a state of ruin. She was under a fog of severe depression and anxiety. She had trouble focusing on any task that didn't require immediate attention like securing a safe living environment for her children.

[10] At the General Division, the Claimant stated that she wasn't sure of the date that she finally discovered, opened, and read the reconsideration letter after moving back into her home. It took her time to complete the appeal to the General Division because of her medical state.<sup>7</sup>

[11] The General Division is presumed to have considered all the evidence, even if it doesn't discuss all the evidence in its decision. The Claimant can overcome that presumption by showing that the evidence was important enough that the General Division should have discussed it.<sup>8</sup>

[12] The General Division didn't discuss this evidence about why the Claimant took so long to provide her appeal. The General Division found that the Minister communicated the reconsideration decision by January 7, 2019. Even if the General Division had found that the Minister didn't communicate its decision until the Claimant opened the mail, the Claimant didn't have evidence about opening the mail within a year of when she appealed to the General Division. Her evidence was only that she opened the mail sometime after December 2019. She didn't appeal until November 2023.

[13] The Claimant hasn't raised an arguable case for an error of fact by the General Division that would justify granting permission to appeal. The General Division didn't discuss the evidence about why the Claimant was delayed in opening the mail because it found that the Minister communicated its decision when it sent the reconsideration letter. The reasons why the Claimant was delayed in opening the mail are not arguably important enough to discuss if the General Division already found that the Minister communicated its decision by January 7, 2019.

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<sup>7</sup> See GD3-4.

<sup>8</sup> See *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498.

## **The Claimant hasn't set out new evidence**

[14] The Claimant hasn't set out any evidence that wasn't already presented to the General Division. Accordingly, new evidence cannot form the basis for permission to appeal.

[15] I've reviewed the record. I'm satisfied there's no argument that the General Division ignored or misunderstood any evidence.<sup>9</sup> The Claimant filed her appeal more than four years after the Minister send the reconsideration letter to the address she used to communicate with them.

[16] The Claimant can always reapply for the CPP disability pension, but her appeal on the application the Minister reconsidered in 2018 is more than a year late. When the Claimant is more than a year late, the time to appeal cannot be extended in any circumstance.

## **Conclusion**

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

Kate Sellar  
Member, Appeal Division

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<sup>9</sup> For the need for this type of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*,