



Citation: *TK v Minister of Employment and Social Development*, 2024 SST 169

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: T. K.
Representative: D. K.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated November 15, 2023 (issued
by Service Canada)

Tribunal member: Brianne Shalland-Bennett

Type of hearing: Videoconference

Hearing date: February 19, 2024

Hearing participants: Appellant
Appellant's representative, support person, and witness

Decision date: February 23, 2024

File number: GP-23-2028

Decision

[1] The appeal is dismissed.

[2] The Appellant, T. K., can't have more time to ask the Minister of Employment and Social Development Canada (Minister) to reconsider its decision of his Canada Pension Plan (CPP) disability pension.

[3] This decision explains why I am dismissing the appeal.

Overview

[4] The Appellant started getting his CPP retirement pension in January 2012. He applied for a CPP disability benefit in January 2015.¹

[5] The Minister denied his application in February 2015. It said he applied for the disability benefit more than 15 months after he started getting his retirement pension. And the law says for that reason he can't get the disability benefit.²

[6] The Appellant asked the Minister to reconsider its decision on June 19, 2023. The Minister refused the Appellant's request. It says he made his request for reconsideration too late.³ The Appellant appealed the Minister's decision to the Social Security Tribunal (Tribunal).

[7] The Appellant says that when he applied for a disability benefit, he didn't know he wasn't entitled to it because he was getting a retirement pension.

[8] The Appellant says the delay in his request was because of his health.⁴ After he got his CPP disability benefit decision, he spoke to his MPP, a lawyer, and Service Canada. He says he was told that no matter how many times he asked for a reconsideration, the decision would stay the same.

¹ See GD2-30 to 34, and GD2-54 to GD2-60.

² See GD2-28 to 29.

³ See GD2-18 and 21 for the Appellant's request. See GD2-22 for the Minister's decision.

⁴ The Appellant has depression, anxiety, panic attacks, and is legally blind.

[9] Recently, the Appellant spoke with a friend who was in a similar situation, but they got another type of disability benefit after getting a retirement pension. He also heard this information on the news. So, he asked his wife to help him ask for a reconsideration. This was in June 2023.

What I have to decide

[10] This appeal **isn't** about if the Appellant should get a CPP disability pension. It is about if he made his request for reconsideration late. If his request was late, I have to consider if the Minister should have given him more time to ask for a reconsideration.

[11] First, I have to decide if the request for reconsideration was late.

[12] If the request was late, I have to decide if the Minister acted judicially (made its decision properly) when it refused the Appellant more time for a reconsideration.⁵

[13] If I find the Minister didn't make its decision properly, then I have to do an assessment and decide if the Appellant's late request for reconsideration should be granted. There are two outcomes of this assessment:

- If I find the request should be granted, I must send the issue back to the Minister with instructions to let the Appellant have more time to make his request.
- If I find the request should not be granted, then I must dismiss the appeal.

Reasons for my decision

[14] The Appellant's request for reconsideration was made late.

[15] The Minister didn't act judicially. The Appellant should not have more time to ask for a reconsideration. I explain the reasons for my decision next.

⁵ The Minister's decision to grant or refuse a late reconsideration request is considered a discretionary decision. See *Canada (Attorney General) v. Uppal*, 2008 FCA 388.

The Appellant's request for reconsideration was late

[16] If a person disagrees with a decision of the Minister, they can ask the Minister to reconsider. They have to do this within 90 days of being told about the decision in writing. If a person waits over 90 days before asking the Minister to reconsider its decision, then the request for reconsideration is considered late.⁶

[17] The Appellant's request for reconsideration was made over a year late. The Minister's decision was made on February 4, 2015. The Appellant's wife testified she has been the person who has spoken to Service Canada on the Appellant's behalf since he started losing his eyesight. She remembers speaking to Service Canada about the denial and getting a letter around February 2015.

[18] The Minister got the Appellant's request for reconsideration in June 2023. This is over the 90-day deadline to file a request for reconsideration. It is also over a year late. The Appellant doesn't dispute this.

The Minister didn't act judicially

[19] The Minister didn't act judicially when it decided not to give the Appellant more time to ask for a reconsideration.

[20] The Minister can reconsider a decision even if the reconsideration request is late. But, the Minister can only do that if:⁷

- there is a reasonable explanation for asking for a longer period, and
- the person has shown a continuing intention to request a reconsideration

[21] If an appellant asks for a reconsideration over a year after getting the decision (which is the case here), the Minister must **also** find:⁸

- there is a reasonable chance of success, and

⁶ See s.81 (1) of the *Canada Pension Plan*.

⁷ See s.74.1 (2) of the *Canada Pension Plan Regulations*.

⁸ See s.74.1 (3) of the *Canada Pension Plan Regulations*.

- no prejudice would be caused to the Minister or a party

[22] The Appellant can't get more time for his request if he doesn't meet **all four** of these factors.

[23] When the Minister is considering these factors, the Minister must act judicially. This means it must not:⁹

- act in bad faith
- act for an improper purpose or motive (the wrong reason)
- consider an irrelevant factor
- ignore a relevant factor
- discriminate against the Appellant

– **The Minister considered irrelevant factors**

[24] The Minister didn't act judicially because it considered irrelevant factors. It used the wrong test when it found the Appellant didn't have a reasonable explanation for being late.

[25] The Minister says the information provided with the reconsideration request did not provide any exceptional or extenuating circumstances that would have prevented the Appellant from requesting a reconsideration in a timely manner.¹⁰

[26] The law doesn't say that the Appellant's explanation must be an exceptional or extenuating circumstance. The law only says that his explanation must be reasonable.

[27] The Minister's test wasn't based on the law. So, I find the Minister didn't act judicially because it considered irrelevant factors.

[28] Next, I will consider if the Appellant should have had more time to ask for a reconsideration based on the factors I described above.

⁹ See *Canada (Attorney General) v Uppal*, 2008 FCA 388; and *Canada (Attorney General) v Purcell*, [1996] 1 FC 644.

¹⁰ See GD2-42 and 43.

The Appellant should not have more time to ask for a reconsideration

[29] Because the Minister didn't act judicially, I must now decide whether the Appellant should have more time to ask for a reconsideration. When I do this, I must consider the same factors the Minister had to consider. In other words, the Appellant must show that on a balance of probabilities (more likely than not) that:

- he has a reasonable explanation for being late
- he had a continuing intention to ask for a reconsideration
- his reconsideration has a reasonable chance of success
- letting him have more time should not prejudice the Minister

– The Appellant doesn't have a reasonable chance of success

[30] The Appellant's request doesn't have a reasonable chance of success.

[31] The Appellant can't get a disability benefit because he got a retirement pension over 15 months prior.

[32] The CPP says a person can't cancel their retirement pension in favour of a disability benefit, when a disability application is made 15 months or more after the retirement pension started to be paid.¹¹

[33] The Appellant started getting his retirement pension in January 2012. He applied for a disability benefit in February 2015. This is over 15 months after he started getting his retirement pension. This means, he isn't entitled to a disability benefit.

[34] There are no other circumstances I can consider when looking at if the Appellant could have applied for a disability benefit when he already got a retirement pension. I can't look at compassionate reasons or extenuating circumstances, like the Appellant not being aware of the rules. I can only interpret and apply the laws of the CPP.¹²

¹¹ See s.66.1 of the *Canada Pension Plan* and section 46.2 of the *Canada Pension Plan Regulations*.

¹² See sections 3(1) and section 49(c) of the *Canada Pension Plan*. See also *Miter v Canada (Attorney General)*, 2017 FC 262.

[35] The Appellant also isn't entitled to a post-retirement disability benefit (PRDB).

[36] The Appellant didn't specifically refer to the benefit by name. However, he was told of a "new benefit" available to people with disabilities who already got their retirement pension. I find he more than likely was talking about the PRDB.

[37] The PRDB is a disability benefit that may be available to people getting a retirement pension. The PRDB came into effect on January 1, 2019. To qualify he:¹³

- can't be over 65 years old,
- has to be getting a retirement pension,
- has to have made valid contributions to the CPP for their minimum qualifying period,¹⁴
- has to have a minimum qualifying period that is after 2018; and,
- has to be disabled within the meaning of the CPP.¹⁵

[38] The PRDB only came into effect on January 1, 2019. The Appellant applied for a disability pension in February 2015. This is four years before the law came into effect. This means, the PRDB doesn't apply to the Appellant.

Conclusion

[39] I find the Appellant didn't meet at least one of the four factors required to get more time for his request. So, I don't have to consider the rest.

[40] This means the Appellant can't have more time to ask for a reconsideration and the appeal is dismissed.

Brianne Shalland-Bennett
Member, General Division—Income Security Section

¹³ See section 44(1)(b) of the *Canada Pension Plan*.

¹⁴ Service Canada uses an appellant's years of CPP contributions to calculate their coverage period, or "minimum qualifying period" (MQP). The end of the coverage period is called the MQP date. See section 44(2) of the *Canada Pension Plan*.

¹⁵ Section 42(2)(a) of the *Canada Pension Plan* defines disability.