



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *VL v Minister of Employment and Social Development*, 2020 SST 993

Tribunal File Number: GP-20-185

BETWEEN:

**V. L.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Carol Wilton

DATE OF DECISION: October 31, 2020

## **DECISION**

[1] The Claimant is allowed an extension of time to appeal.

## **OVERVIEW**

[2] The Claimant applied for a spousal allowance under the *Old Age Security Act* (OAS) in June 2016. This was shortly before her 60<sup>th</sup> birthday on July 20, 2016. She stated that she was the wife of R. L. R. L. was receiving the OAS pension.<sup>1</sup> The Minister denied the application initially. In a decision letter dated November 9, 2018, the Minister denied the application upon reconsideration. The Minister argued that the Claimant and her husband had “not been in a conjugal and cohabitative relationship” for many years.

[3] The Claimant appealed that decision to the Social Security Tribunal (Tribunal) on January 27, 2020, beyond the 90-day limit set out in the legislation.<sup>2</sup>

## **ISSUE**

[4] I must decide whether to allow an extension of time for the Claimant to appeal.

## **PRELIMINARY MATTER**

[5] The Claimant lives on a remote reserve in northern Canada. She does not have e-mail. Communication to and from the reserve by regular mail is slow. The Claimant’s first language is the “n” dialect of Cree. She asked for an interpreter at the hearing. Information in the file suggested that the Claimant had difficulty understanding the appeal process. It also suggested that there had been some irregularities in the Minister’s handling of the Claimant’s correspondence.

[6] Taking all of these circumstances into account, I decided to hold a pre-hearing conference on October 14, 2020, to clarify the issues between the parties. The Claimant attended with an

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<sup>1</sup> GD2-64

<sup>2</sup> This is at paragraph 52(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

interpreter, Mr. Jack Grieves. A representative of the Minister, Ms. Karen Shearer, also attended.

## **ANALYSIS**

### ***Time limits for appealing to the General Division***

[7] Claimants must bring their appeals to the General Division of this Tribunal “in the prescribed form and manner” within 90 days after the Minister communicated the reconsideration decision.<sup>3</sup> The General Division can grant an extension of time, but not beyond “one year after the day on which the decision is communicated” to the claimant.<sup>4</sup>

[8] The “prescribed form and manner” for an appeal means an appeal that meets the requirements under the Tribunal *Regulations* (SST Regulations). The SST Regulations provide a detailed list of what the appeal must contain.<sup>5</sup>

[9] If there are “special circumstances,” however, the Tribunal can decide to go ahead without either the claimant or the Minister following a specific part of the SST Regulations.<sup>6</sup> In addition, the SST Regulations say that they need to be interpreted to arrive at “the just, most expeditious [speedy] and least expensive determination of appeals.”<sup>7</sup>

### ***Special circumstances apply to this appeal***

[10] At the pre-hearing conference, the Claimant stated that she received the reconsideration decision on December 5, 2018. Ms. Shearer accepted this date. The Claimant therefore had until March 5, 2019, to file her appeal with the Tribunal. The Claimant did not file her appeal of the Minister’s reconsideration decision by March 5, 2019. However, she did notify the Minister not long afterwards that she wanted to appeal that decision.

[11] Service Canada received a letter from the Claimant on April 2, 2019, advising that she wished to appeal the Minister’s reconsideration decision. This letter was misfiled. As a result, the

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<sup>3</sup> DESDA, s. 52(1)(b)

<sup>4</sup> DESDA, s. 52(2)

<sup>5</sup> SST Regulations, subsection 24(1)

<sup>6</sup> SST Regulations, paragraph 3(1)(b)

<sup>7</sup> SST Regulations, section 2

Minister did not follow its usual procedure: returning the letter to the Claimant and advising her to appeal directly to the Tribunal. At the hearing, Ms. Shearer stated that because the usual procedure wasn't followed, the Minister accepted April 2, 2019 as the date the Claimant appealed the decision.

[12] I must therefore consider the appeal as late because it was received more than 90 days after the Claimant received the reconsideration decision, but less than 365 days afterwards.

***The time to appeal is extended***

[13] In deciding whether to allow further time to appeal, I considered and weighed the four factors set out in the *Gattellaro* decision.<sup>8</sup> The overriding consideration is that the interests of justice be served.<sup>9</sup>

[14] I find that the Claimant has a reasonable explanation for the delay in submitting her appeal. As the Minister's submissions stated, confusion regarding the appeal process, difficulties in communication between the parties, and misfiling of the Claimant's letters explain the delay.

[15] I am satisfied that the Claimant showed a continuing intention to pursue the appeal. As stated above, in April 2019 the Minister received a letter from her requesting an appeal of the reconsideration decision. (It was misfiled). Following a telephone conversation on May 13, 2019, the Claimant submitted a second letter to Service Canada regarding her appeal to the Tribunal. (This letter was also misfiled by the Minister). The Claimant contacted Service Canada on three subsequent occasions between August 2019 and January 2020 to inquire about the progress of her appeal.

[16] I find that the Claimant has an arguable case on appeal. There is some evidence to support her argument that her separation from her husband was because of reasons beyond their control.

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<sup>8</sup> *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883

<sup>9</sup> *Canada (Attorney General) v. Larkman*, 2012 FCA 204

[17] The Minister submitted that it would not be prejudiced if an extension were allowed. I find that the Minister's ability to respond, given its resources, would not be unduly affected by an extension of time to appeal.

[18] I note that the Minister submitted that the Claimant met all four criteria required to allow an extension of time. The Minister requested that the request for an extension of time to appeal be allowed.

## CONCLUSION

[19] The overriding consideration is that the interests of justice be served.<sup>10</sup> The Claimant is 64 years old, does not speak English, and is a member of an historically disadvantaged community. In consideration of the *Gattellaro* factors and in the interests of justice, I allow an extension of time to appeal.<sup>11</sup>

Carol Wilton  
Member, General Division - Income Security

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<sup>10</sup> This is explained in a decision of the Federal Court of Appeal, *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

<sup>11</sup> Pursuant to subsection 52(2) of the DESD Act.