



[TRANSLATION]

Citation: *JM v Minister of Employment and Social Development*, 2022 SST 10

Social Security Tribunal of Canada Appeal Division

Extension of Time Decision

Applicant: J. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated
June 8, 2021 (GP-20-740)

Tribunal member: Jude Samson

Decision date: January 10, 2022

File number: AD-21-426

Decision

[1] An extension of time to make an application to the Appeal Division is refused. The appeal will not proceed.

Overview

[2] J. M. is the Applicant in this case. She applied for the Allowance for the Survivor under the Old Age Security program. In support of her application, the Applicant argues that she was Y. B.'s wife at the time of his death.

[3] The Minister of Employment and Social Development refused the Applicant's application for an allowance. In the Minister's view, the marriage between the Applicant and the deceased ended in divorce. Because of this, the Applicant was not entitled to an allowance. In support of its decision, the Minister cited a divorce judgment that the Superior Court of Québec issued on April 30, 2004.¹

[4] The Applicant appealed the Minister's decision to the Tribunal's General Division. It dismissed the appeal.

[5] The Applicant now wants to appeal the General Division decision to the Appeal Division. However, her application to the Appeal Division was filed late. This means that the Applicant needs an extension of time to make the application.

[6] For the reasons that follow, I am refusing the Applicant's request for an extension.

Issues

[7] In this decision, I answer the following questions:

- a) Was the application to the Appeal Division late?

¹ The divorce judgment is on pages GD2-13 to GD2-17.

b) If so, should I extend the time for filing the application?

Analysis

The application was late

[8] The General Division decision is dated June 8, 2021. The Applicant says she received it around June 17, 2021.²

[9] The Applicant's application was due 90 days later, on September 15, 2021.³ However, the Appeal Division did not receive the application until November 30, 2021.

[10] This means that the Applicant's application to the Appeal Division was submitted late. I need to grant an extension of time for the appeal to proceed.

I am not extending the time for filing the application

[11] When deciding whether to grant an extension of time, I have to consider the following factors:

- a) Was there a continuing intention to pursue the application?
- b) Is there a reasonable explanation for the delay?
- c) Is there prejudice to the other party?
- d) Does the application disclose an arguable case?⁴

[12] The importance of each factor may be different depending on the case. Above all, I have to consider whether the interests of justice are served by granting the extension.⁵

² See page AD1-1.

³ This time limit is set out in section 57(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

⁴ The Federal Court set out this test in *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 833.

⁵ The Federal Court of Appeal outlined this test in *Canada (Attorney General) v Larkman*, 2012 FCA 204.

– **The Applicant meets the first three factors**

[13] The Applicant says she first sent an application to the Appeal Division within 90 days after receiving the General Division decision. However, this first application was never received.

[14] The Applicant followed up with the Tribunal, and the problem was discovered. So, the Applicant asked for a second copy of the necessary documents, and the Appeal Division received them, duly completed, on November 30, 2021.

[15] In the circumstances, I am satisfied that the Applicant had a continuing intention to pursue her application and that she has given a reasonable explanation for the delay.

[16] In addition, given the relatively short delay and the accessibility of the relevant documents, I find that the Minister's ability to defend itself would not be unduly affected if an extension of time were granted.

– **The Applicant does not have an arguable case on appeal**

[17] In assessing this factor, I have to consider the limited role that the *Department of Employment and Social Development Act* assigns the Appeal Division. Specifically, the Appeal Division can intervene in a General Division decision only if it is established that at least one of the relevant errors has been made.⁶

[18] In her application to the Appeal Division, the Applicant argues that the General Division breached procedural fairness and that it made errors of jurisdiction, law, and fact.

[19] The Applicant's arguments mainly relate to how the General Division considered the Superior Court of Québec's divorce judgment. In her case, the Applicant maintains that the judgment [translation] "is invalid."⁷ She is asking the Tribunal to set the judgment aside.

⁶ The relevant errors (also known as "grounds of appeal") are set out in section 58(1) of the DESD Act.

⁷ See page AD1-11.

[20] I am sympathetic to the Applicant's arguments. However, in my view, they are bound to fail.

[21] The Applicant alleges that the General Division failed to question the validity of the divorce judgment. However, the Tribunal does not have the power to change or set aside a judgment of the Superior Court of Québec.

[22] The Applicant applied for a benefit under a Canadian law. And, for the purposes of Canadian law, the Superior Court of Québec judgment says that the Applicant's marriage to the deceased ended in 2004. The Tribunal is required to respect that judgment until a Quebec court changes it or sets it aside.

[23] While I am sympathetic to the difficulties she faced at the time, the Applicant participated in the proceedings before the Superior Court of Québec. So, if she wanted to object to the issuing of a divorce judgment, she should have raised her arguments then.

[24] Concerning procedural fairness, I have listened to the audio recording of the hearing. I admit that the General Division member made many comments. But, in my view, the member's comments were relevant and respectful.

[25] Furthermore, the additional points the Applicant wanted to raise still deal with setting aside the divorce judgment.⁸ But, as I have just explained, the Tribunal cannot decide this issue.

[26] In a sense, the Applicant's arguments also urge me to reweigh the evidence in a way that would be more favourable to her case.⁹ But, without a relevant error, that is not part of the Appeal Division's role.¹⁰

⁸ See the Applicant's arguments on pages AD1-10 to AD1-18.

⁹ See, for example, the Applicant's arguments on pages AD1-19 to AD1-23.

¹⁰ This argument is found in Federal Court decisions like *Rouleau v Canada (Attorney General)*, 2017 FC 534 at para 42 and *Grosvenor v Canada (Attorney General)*, 2018 FC 36 at para 34.

[27] Lastly, I point out that several of the remedies the Applicant sought fall outside the Tribunal's jurisdiction,¹¹ particularly those related to the divorce judgment and the settlement of the deceased's estate.

[28] Nevertheless, I have reviewed the underlying record and the decision under appeal to determine whether the General Division may have misconstrued or overlooked the relevant evidence.¹² But, I find that the General Division considered the relevant evidence.

[29] Although three of the above factors support extending the time to appeal, I have also assessed what the interests of justice might require. On this point, I acknowledge that refusing to extend the time to appeal means that the Applicant's case ends here. However, I have to weigh that against the extent to which the interests of justice would be served by allowing an appeal that is bound to fail to proceed.

[30] In short, I give particular weight to the "arguable case" factor.¹³

[31] Having considered the above factors and the interests of justice, I find that I have to refuse to extend the time for the Applicant to file the application with the Appeal Division.

Conclusion

[32] I am refusing to extend the time for the Applicant to make an application to the Appeal division. This means that the appeal will not proceed.

Jude Samson
Member, Appeal Division

¹¹ The remedies sought are on pages AD1-24 and AD1-25.

¹² This argument is found in Federal Court decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.

¹³ The Federal Court of Appeal and the Federal Court came to the same conclusion in *McCann v Canada (Attorney General)*, 2016 FCA [sic] 878 and *Maqsood v Canada (Attorney General)*, 2011 FCA 309.