



Citation: *LL v Minister of Employment and Social Development*, 2025 SST 123

## **Social Security Tribunal of Canada**

### **Appeal Division**

# **Extension of Time and Leave to Appeal Decision**

**Applicant:** L. L.

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

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**Decision under appeal:** General Division decision dated April 23, 2024  
(GP-23-1765)

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**Tribunal member:** Kate Sellar

**Decision date:** February 14, 2025

**File number:** AD-25-34

## Decision

[1] I granted the Claimant, L. L., an extension of time to apply to the Appeal Division. However, I refused to grant the Claimant leave (permission) to appeal the General Division decision. The appeal will not proceed. These are the reasons for my decision.

## Overview

[2] The Claimant has made multiple applications for the Canada Pension Plan (CPP) division of unadjusted pensionable earnings (credit split) with her former spouse. This includes an application dated May 8, 1996, which the Minister of Employment and Social Development (Minister) refused. The Minister explained that the Claimant required a waiver to be signed by both the Claimant and her former spouse to be eligible for the credit split. This requirement arose because she applied for the credit split more than three years after she divorced.

[3] The Claimant requested reconsideration of this decision. She also provided a waiver both she and her former spouse signed. However, the Minister decided the waiver wasn't valid. The Minister refused the request for reconsideration.

[4] The Claimant appealed this decision to the Office of the Commissioner of Review Tribunals. That office dismissed her appeal because she didn't apply for the credit split within three years, and the waiver required for applications after the three-year period wasn't valid.

[5] The Claimant requested permission to appeal but the Pension Appeals Board (PAB) refused. She made another application for the CPP credit split, but the Minister refused that application too.

[6] On April 13, 2010, the Claimant applied for the CPP credit split again. This is the application that is the subject of this appeal. The Minister refused the application at the initial level. On June 14, 2023, more than 13 years later, the Claimant requested reconsideration of the Minister's decision. On August 24, 2023, the Minister refused to allow the Claimant's late request for reconsideration to go ahead.

[7] The Claimant appealed to this Tribunal. The General Division dismissed the Claimant's appeal. The General Division decided the following:

- The Claimant's request for reconsideration was late.
- The Minister acted judicially when it refused to exercise its discretion to consider the late request for reconsideration.

## Issues

[8] The issues in this appeal are:

- a) Was the Claimant's application to the Appeal Division late?
- b) If so, should I extend the time for filing the application to the Appeal Division?
- c) Is there an arguable case that the General Division made an error that would justify giving the Claimant permission to appeal?
- d) Does the application set out evidence that wasn't presented to the General Division?

## Analysis

### The application to the Appeal Division was late

[9] The Claimant has 90 days from the day the General Division communicates its decision to file her application to the Appeal Division.<sup>1</sup>

[10] The General Division decision is dated April 23, 2024. The Claimant doesn't remember when she received it, although it appears the Tribunal sent the decision to her by regular mail on the same day the decision was issued.<sup>2</sup> The Appeal Division received the Claimant's appeal on January 14, 2025, long after the 90-day deadline passed.

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<sup>1</sup> See section 571(b) in the *Department of Employment and Social Development Act* (Act).

<sup>2</sup> See AD1-4.

[11] Given all of the information that I have, I'm satisfied that its more likely than not the Claimant received the General Division decision by early May 2024 by mail. Accordingly, her application to the Appeal Division is late.

[12] I can consider give an extension of time for filing the application to the Appeal Division as long as the application isn't more than a year late.<sup>3</sup>

### **I'm extending the time for filing the application**

[13] When deciding whether to grant an extension of time, I have to consider whether the Claimant has a reasonable explanation for why the application is late.<sup>4</sup>

[14] Initially, the Claimant didn't provide any explanation about why her application to the Appeal Division was late.<sup>5</sup> However, the Tribunal wrote to the Claimant to give her a chance to provide a reasonable explanation.

[15] The Claimant explained that she has been sick and that she couldn't find her file number.<sup>6</sup> While the explanation about the Claimant's illness is quite vague, I'm satisfied that it's reasonable. The Claimant's delay was not advisable or prudent, but illness is a reasonable explanation for the delay in this circumstance.

[16] Accordingly, I'm extending the time for filing the application. This allows me to move on to consider whether the Claimant may have permission to appeal.

### **I'm not giving the Claimant permission to appeal**

[17] I can give the Claimant permission to appeal if the application raises an arguable case that the General Division:

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<sup>3</sup> See section 57(2) in the Act.

<sup>4</sup> It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

<sup>5</sup> See AD1-8.

<sup>6</sup> See AD1B-1.

- 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>7</sup>

[18] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.<sup>8</sup>

[19] 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 any error that would justify giving the Claimant permission to appeal.**

[20] The Claimant argues that the General Division made a mistake in deciding the appeal. The Claimant says that she was married for 18 years and her then spouse contributed throughout that time. She says no lawyer ever advised her that she needed to apply for the credit split within three years of the divorce. She says that her former spouse signed the waiver and that she is waiting for the credit split.<sup>9</sup>

[21] The focus of the General Division's decision wasn't whether the Claimant is entitled to a CPP credit split. The General Division first had to decide whether the Claimant's request to the Minister to reconsider its decision was late. If it was late, the General Division needed to decide whether the Minister's decision not to extend the time for considering the Claimant's request for reconsideration was made judicially.<sup>10</sup>

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<sup>7</sup> See section 58.1(a) and (b) in the Act.

<sup>8</sup> See section 58.1(c) in the Act.

<sup>9</sup> See AD1-5.

<sup>10</sup> See paragraphs 12 to 14 in the General Division decision and the letter the General Division sent the Claimant before the hearing at GD3.

[22] Accordingly, my role on the Appeal Division also isn't to decide whether the Claimant is entitled to the credit split. Instead, I need to decide whether the Claimant has raised an arguable case for an error in the General Division's decision.

[23] The Claimant has explained why she wants the credit split. But she hasn't pointed to any possible error that the General Division might have made about whether the Minister acted judicially when it refused to consider her late request for reconsideration.<sup>11</sup>

[24] Accordingly, I can't give the Claimant permission to appeal the General Division's decision about late reconsideration based on the mistake she says the General Division made about the credit split. The Claimant hasn't raised an arguable case for an error by the General Division.

– **There's no new evidence that would justify giving the Claimant permission to appeal**

[25] The Claimant hasn't provided any new evidence that wasn't already presented to the General Division. Accordingly, new evidence also cannot justify giving the Claimant permission to appeal.

[26] I've reviewed the record.<sup>12</sup> I'm satisfied that there's no arguable case that the General Division ignored or misunderstood any other important evidence that could have affected the outcome for the Claimant.

[27] The Claimant was many years late in requesting reconsideration.

[28] As the General Division explained, the Minister gave the Claimant information about the criteria they consider when deciding whether to consider a late request for reconsideration. The Claimant didn't answer the Minister. The Minister considered the information it had, and ultimately refused to consider the late request for

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<sup>11</sup> Consistent with the Federal Court decision in *Bossé v Canada (Attorney General)*, 2015 FC 114, the Appeal Division gave the Claimant a second opportunity to explain what kind of error the General Division made.

<sup>12</sup> For more on the Appeal Division completing this type of review, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

reconsideration.<sup>13</sup> The General Division gave the Claimant the chance to explain how the Minister might have failed to act judicially when it refused to consider the late request for reconsideration, but I see no arguable error in the General Division's analysis of that evidence.

[29] Further, as the General Division points out, the Minister reached the conclusion that the Claimant's appeal wasn't likely to succeed. The issue of the credit split had already been decided, and the Pension Appeals Board refused permission to appeal.

## **Conclusion**

[30] I've granted the Claimant an extension of time for the application at the Appeal Division. However, I've refused to give the Claimant permission to appeal the General Division's decision. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division

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<sup>13</sup> See paragraphs 26 and 27 in the General Division decision.