

Citation: *C. C. v. Minister of Human Resources and Skills Development*, 2014 SSTGDIS 16

Appeal No: GP-13-3203

BETWEEN:

C. C.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

and

W. S.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section
Extension of Time to Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Raymond Raphael

DATE OF DECISION: June 12, 2014

DECISION

[1] The Tribunal allows an extension of time for the Appellant to appeal to the General Division of the Social Security Tribunal.

INTRODUCTION

[2] The Appellant applied for a Division of Canada Pension Plan Credits (Credit Split) on September 22, 2011. In her application, she claimed that she and W. S. (the Added Party) were married on June 17, 1972 and that they separated on October 1, 2010. In a statement to the Respondent dated November 7, 2011, the Added Party indicated that he and the Appellant separated on June 26, 1998. The Added Party's statement was accompanied by a statutory declaration annexing a letter dated June 25, 1998 sent by a lawyer on behalf of the Appellant advising that the Appellant "wishes to terminate the marriage and negotiate a settlement of all outstanding issues..." The Respondent approved the credit split on June 8, 2012; however, the Division of Unadjusted Pensionable Earnings (DUPE) was only for the years 1972 to 1997, which assumes a June 25, 1998 separation date. On July 5, 2012 the Appellant requested a reconsideration of the period for the DUPE, and took the position that the DUPE should be determined on the basis of an October 1, 2010 separation date. The Respondent denied this request at the reconsideration level by letter dated November 14, 2012 which was received by the Appellant on November 22, 2012.

[3] The Appellant claims to have sent a notice of appeal of that decision to the Office of the Commissioner of Review Tribunals (OCRT) on January 7, 2013; however, there is no record in the file confirming that the notice of appeal was received by the OCRT. A copy of that notice of appeal was enclosed with an undated letter from the Appellant which was date stamped by the Tribunal on November 14, 2013. On January 7, 2014 the Tribunal notified the Appellant that her appeal was incomplete and requested additional information; in a January 16, 2014 telephone conversation, the Tribunal confirmed that the Appellant has already provided all of the requested information and that she should disregard the letter sent to her on January 17, 2014. Accordingly, the Tribunal has determined that even though the notice of appeal may not have been received by the OCRT, it was properly filed with the Tribunal on November 14, 2013.

[4] The Appeal is beyond the time limit set out in paragraph 52(1) (b) of the *Department of Employment and Social Development Act* (DESD Act).

ISSUE

[5] The Tribunal must decide whether to allow an extension of time for the Appellant to appeal.

THE LAW

[6] Under paragraph 52(1)(b) of the DESD Act, the Appellant had 90 days to bring the appeal to the General Division of the Tribunal. The Tribunal can decide to allow further time for an Appellant to appeal pursuant to subsection 52(2) of the DESD Act.

[7] When deciding whether to allow further time to appeal, the Tribunal must consider and weigh criteria as set out in case law. In *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883, the Federal Court states that the criteria are as follows:

1. The Appellant has demonstrated a continuing intention to pursue the appeal;
2. The matter discloses an arguable case;
3. There is a reasonable explanation for the delay; and
4. There is no prejudice to the other party in allowing the extension.

[8] The weight to be given to each of the *Gattellaro* factors may differ in each case, and in some cases, different factors will be relevant. The overriding consideration is that the interests of justice be served – *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

APPELLANT'S SUBMISSIONS

[9] The Appellant gives the following reasons why the Tribunal should allow further time to appeal:

- a) She sent her notice of appeal to the OCRT on January 7, 2013 and did not receive a reply;

- b) She contacted the OCRT in March 2013, and was told that they were very busy and that she would be contacted in several months, and that she should not call back;
- c) She is recovering from open heart surgery and a small stroke, and needs to keep her stress levels at a minimum.

ANALYSIS

Continuing Intention to Pursue the Appeal

[10] The Appellant signed a notice of appeal on January 7, 2013 which was within the ninety day appeal period, and has stated that she sent it to the OCRT at that time. She contacted the OCRT in March 2013 to determine the status of her appeal, and was told that they were very busy and that she should not call back. The Appellant followed up with the Tribunal in November 2013, and provided all information required for the appeal. Although the OCRT did not forward a record of the appeal to the Tribunal, and for some reason may not have received it, the Appellant's course of conduct evidences her continuing intention to pursue the appeal.

Arguable Case

[11] The file documents indicate that the issue in dispute is a factual one as to the date on which the Appellant and the Added Party separated. The Added Party relies on a letter dated June 25, 1998 sent by a lawyer on behalf of the Appellant advising that the Appellant "wishes to terminate the marriage and negotiate a settlement of all outstanding issues..." The Appellant takes the position that the letter was not followed up on and that they did not separate until October 1, 2010. The Appellant has provided documents including insurance policies, tax returns, and an interim support agreement to support her position. There is a factual issue to be resolved by the appeal, and the file discloses an arguable case.

Reasonable Explanation for the Delay

[12] The Appellant's undated letter received by the Tribunal on November 14, 2013 explains that the Appellant signed and forwarded an appeal to the OCRT on January 7, 2013 within the ninety day appeal period. She followed up in March 2013, and forwarded the required appeal

documentation to the Tribunal in November 2013. The Tribunal has determined that this provides a reasonable explanation for the delay.

Prejudice to the Other Parties

[13] The Tribunal has determined that there is no prejudice to the Respondent or the Added Party in allowing an extension of time to appeal the reconsideration decision. The issue in dispute is a factual one as to the actual date of separation, and there is no suggestion of prejudice because of the delay.

CONCLUSION

[14] The Appellant has satisfied the criteria to allow further time to appeal.

[15] The extension of time within which to bring the appeal is allowed.

Raymond Raphael

Member, General Division