Citation: *L. M. v. Minister of Employment and Social Development*, 2015 SSTAD 1263

Appeal No. AD-15-1065

BETWEEN:

L. M.

Applicant

and

Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)

Respondent

and

K. R.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Extension of Time and Leave to Appeal Decision

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SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: October 27, 2015

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of a Canada Pension Plan Review Tribunal dated October 17, 2012. The Canada Pension Plan Review Tribunal granted the appeal by the Added Party (now deceased), in concluding that the actual date of separation between the Applicant and the Added Party was October 2004, and that the Applicant's application for a division of unadjusted pensionable credits made in 2009 was therefore made more than four years after the date of separation and thereby late.

[2] The Applicant filed an application requesting leave to appeal to the Appeal Division on September 28, 2015, seemingly well past the 90-day deadline by which to file an application requesting leave to appeal. To succeed on this leave application, I must be satisfied that the leave application was filed on time, or if it was not, that I have jurisdiction to and should exercise my discretion and extend the time for filing of the leave application. I must also be satisfied ultimately that the appeal has a reasonable chance of success.

ISSUES

[3] The following issues are before me:

(a) Was the application requesting leave to appeal filed on time and if not, do I have jurisdiction to and should I exercise my discretion and extend the time for filing of the leave application?

(b) Does the appeal have a reasonable chance of success?

BACKGROUND and HISTORY OF PROCEEDINGS

[4] The Applicant and the Added Party were in a common-law relationship commencing in June 1981. There is a dispute between the two parties as to when the common-law relationship ended.

[5] The Applicant applied for a division of unadjusted pensionable credits on April 1, 2009. The Respondent denied her application on July 6, 2009, on the basis that she did not meet all of the eligibility requirements of the *Canada Pension Plan.* In particular, the Respondent noted that she had applied more than four years after the month of separation, and there was no signed statement waiving the four-year time limit.

[6] The Applicant sought a reconsideration of the Respondent's decision. On June 30, 2010, the Respondent wrote to the Applicant advising that, after reconsidering her new information, a division of unadjusted pensionable credits earned between January 1, 1981 and December 31, 2005 would take place. It is unclear, based on the record before me, the basis upon which the Respondent came to this determination, although I infer from the decision of the Canada Pension Plan Review Tribunal that the Respondent relied on a ruling made by a provincial court judge that the date of separation ought to be September 2006. The Respondent noted at the hearing before the Canada Pension Plan Review Tribunal that the provincial court judge also did not look "behind the order that was made in Supreme Court".

[7] The Added Party appealed the reconsideration decision to a Canada Pension Plan Review Tribunal, which heard the appeal on May 22, 2012. The Canada Pension Plan Review Tribunal noted that the Applicant "chose not to attend the hearing".

[8] The Canada Pension Plan Review Tribunal heard evidence and submissions from the Added Party and submissions from a representative on behalf of the Respondent. The Added Party also filed two unsworn letters.

[9] There was contradictory evidence before the Canada Pension Plan Review Tribunal. Ultimately it rejected the ruling of the provincial court, and for that matter, the apparent findings of the Supreme Court of British Columbia, in preferring the evidence of the Added Party over the Applicant.

[10] The Applicant appealed the decision of the Canada Pension Plan Review Tribunal to the Social Security Tribunal on September 28, 2015. The application requesting leave to

appeal does not indicate when the Applicant might have received the decision of the Canada Pension Plan Review Tribunal.

[11] The Social Security Tribunal wrote to the Applicant on September 30, 2015, confirming that it had received her application for leave to appeal to the Appeal Division. The Social Security Tribunal noted that the leave application appeared to have been filed more than 90 days after the date that the decision of the Canada Pension Plan Review Tribunal had been communicated to her. The Social Security Tribunal wrote:

> If an Application is filed beyond the 90-day time limit, a Tribunal Member must decide if an extension of time should be granted before the appeal can proceed. An extension cannot be granted if more than 1 year has passed since the decision was communicated to the Appellant.

SUBMISSIONS

[12] The Applicant explained that she was appealing "at this late date" because of the death of her former common-law spouse. The Applicant submits essentially that she was denied a fair hearing before the Canada Pension Plan Review Tribunal, as she had apparently been advised by "the gentleman [she spoke with] on the phone from SST" that she did not need to attend the hearing. She submits that she should be entitled to a division of unadjusted pensionable credits as she had contributed 23 years of her life towards the common-law relationship and to raising their children and attending to the household needs. She requested copies of the exhibits which formed part of the evidence before the Canada Pension Plan Review Tribunal.

[13] Neither the Respondent nor the Estate of the Added Party filed any submissions.

ANALYSIS

(a) Is there a basis for the Appeal Division to extend the time for filing of the leave application?

[14] Under paragraph 57(1)(b) of the *Department of Employment and Social Development Act* (DESDA), the Applicant had 90 days after the day on which the decision

of the Canada Pension Plan Review Tribunal had been communicated to her to file an application for leave to appeal. This section also requires that the application be in the prescribed form and manner.

[15] Under subsection 57(2) of the DESDA, the Appeal Division may allow further time within which an application for leave to appeal is to be made, but "in no case may an application be made more than one year after the day on which the decision is communicated to the appellant".

[16] There is no evidence before me as to when the Applicant might have received the decision of the Canada Pension Plan Review Tribunal, but if I were to apply the deeming provisions under paragraph 19(1)(a) of the *Social Security Tribunal Regulations*, the Applicant would be deemed to have received the decision, if sent by ordinary mail, 10 days after the day on which it was mailed to her. Even if I did not apply these deeming provisions, it would be reasonable to expect that, other than for any extraordinary circumstances, the Applicant would have long ago received the decision of the Canada Pension Plan Review Tribunal. The Applicant also seems to acknowledge that the leave application is late. In her submissions, she wrote, "the reason for this appeal at this **late date**" (my emphasis). By any measure, the Applicant did not file a formal leave application in the prescribed form and manner until September 28, 2015 – until more than two years and possibly close to three years after the day she might have received the decision of the Canada Pension Plan Review Tribunal.

[17] Subsection 57(2) of the DESDA does not confer any jurisdiction or authority upon the Appeal Division to extend the time for filing a leave application beyond one year. The Appeal Division does not have any discretion to extend the time for filing the leave application beyond its statutory authority. On this basis alone, and notwithstanding the fact that I would not have disturbed any findings of fact made by the Supreme Court of British Columbia, if indeed there had been any or the possibility that the Applicant might have been provided with erroneous advice, I am left with no option in this case but to refuse the request to extend the time for filing and to refuse the leave application.

(b) Leave application

[18] As I have no discretion to extend the time for filing of the leave application beyond one year after the day on which the decision of the Canada Pension Plan Review Tribunal was communicated to the Applicant, the leave application and appeal of the decision of the Canada Pension Plan Review Tribunal have now been rendered moot.

SUMMARY

[19] In summary, the responses to the issues set out in paragraph 3 are as follows:

(a) Was the application requesting leave to appeal filed on time and if not, do I have jurisdiction to and should I exercise my discretion and extend the time for filing of the leave application?

Response: No, the application requesting leave to appeal was not filed on time and I do not have jurisdiction to extend the time for filing of the leave application, given that it was filed more than one year after the decision of the Canada Pension Plan Review Tribunal had been communicated to the Applicant.

(b) Does the appeal have a reasonable chance of success?

Response: This question has been rendered moot, in light of the fact that I have no jurisdiction to extend the time for filing of the leave application.

CONCLUSION

[20] The Application to extend the time for filing is refused, as is the application requesting leave to appeal.

Janet Lew
Member, Appeal Division