

Citation: *L. R. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 60

Appeal No. AD-13-59

BETWEEN:

**L. R.**

Applicant

and

**Minister of Human Resources and Skills Development**

Respondent

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

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SOCIAL SECURITY TRIBUNAL MEMBER: VALERIE HAZLETT PARKER

DATE OF DECISION: April 8, 2014

## **DECISION**

The Tribunal refuses an extension of time for the Applicant to apply for leave to appeal.

## **INTRODUCTION**

[1] On September 24, 2102 a Review Tribunal determined that a Canada Pension Plan disability pension was not payable. The Applicant claims that he originally filed an application for leave to appeal (the “Application”) with the Pension Appeals Board (the “PAB”) on October 4, 2012. This was not acknowledged by the PAB, and the PAB did not make any decision on this matter.

[2] The Social Security Tribunal (SST) acknowledged receipt of the application for leave to appeal on November 13, 2013, which was after the 90 day time period to do so had expired.

## **ISSUE**

[3] The Tribunal must decide whether to allow the Applicant further time to apply for leave to appeal, and if such additional time is granted, whether to grant leave to appeal.

## **THE LAW**

[4] In accordance with section 260 of the Jobs, Growth and Long-term Prosperity Act, an Application filed with the PAB before April 1, 2013 “is deemed to be an application for leave to appeal filed with the Appeal Division of the Social Security Tribunal on April 1, 2013, if no decision has been rendered with respect to leave to appeal”.

[5] As of April 1, 2013, the PAB had not rendered a decision with respect to this Application. Therefore, the Appeal Division must now decide whether to allow an extension of time to make the Application pursuant to subsection 57(2) of the Department of Employment and Social Development Act (DESD Act).

[6] When deciding whether to allow further time to appeal, the Member is guided by decisions of the Courts on this issue. *In Canada (Minister of Human Resources*

*Development) v. Gattellaro*, 2005 FC 883, the Federal Court stated that the criteria are as follows:

1. The Appellant must demonstrate 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.

[7] 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.

[8] The Federal Court also concluded that the question of whether a party has an arguable case at law is akin to determining whether that party, legally, has a reasonable chance of success.

[9] Subsection 58(1) of the DESD Act states that the only grounds of appeal are the following:

- a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[10] The decision of the Review Tribunal is considered a decision of the General Division

## **SUBMISSIONS**

[11] The Applicant provided the following submission in support of this request for further time to make the application:

- a) The Application was filed in time with the PAB, but was not acted on for reasons beyond the control of the Applicant;
  
- b) The Applicant met the criteria for an extension of time to be granted as that is set out in the *Larkman* decision. The Applicant clearly had a continuing intention to appeal this matter as demonstrated by continued contact with the PAB and the SST, the delay is explained by the transition from the PAB to the SST, he had an arguable case based on the new evidence provided in the letter from Dr. KaKar dated October 1, 2012 and there would be no prejudice to the other party if this matter were to proceed.

The Respondent made no submissions.

#### **ANALYSIS**

[12] I find that the Application was filed late. The Review Tribunal decision was dated September 24, 2012. Although the Applicant argued that he filed the Application with the PAB on October 4, 2012 there is no evidence in the PAB records that indicated it was received by it. The Applicant did not correspond with the PAB regarding this matter prior to it ceasing to hear cases on March 31, 2013. The SST acknowledged receipt of the Application on November 13, 2013. This was long after the time for filing the Application had expired.

[13] The application for an extension of time to file a leave to appeal must be examined in light of the factors set out in the *Gattellaro* decision. I find that the Applicant had a continuing intention to appeal this matter. He claimed to have filed a leave to appeal application with the PAB soon after the Review Tribunal decision was communicated to him. His representative produced a letter dated October 4, 2012 that set out the grounds for leave to appeal. The Application was filed with the SST. The Appellant's Representative also had subsequent contact with this Tribunal regarding the progress of the matter.

[14] For these reasons, I also conclude that the Applicant has a reasonable explanation for the delay in this matter.

[15] In assessing whether the Appellant has an arguable case, the Tribunal is bound by section 58 of the DESD Act which sets out an exhaustive list of grounds of appeal.

[16] In this case, the Appellant did not allege that the Review Tribunal made any error of law or fact in reaching its conclusion. Therefore, no grounds of appeal are established on this basis.

[17] The Appellant submitted a report penned by Dr. KaKar dated October 1, 2012 as new evidence. The provision of new evidence is not a ground of appeal under the DESD Act. Therefore, the presentation of a new medical report is not a ground of appeal that has a reasonable chance of success.

[18] Finally, the Applicant claims that there would be no prejudice to the other party if this matter were to proceed without any further explanation for the statement. I cannot find that this argument is a ground of appeal that has a reasonable chance of success in this case.

[19] While all of the factors above must be considered in a request for an extension of time for leave to appeal, they are not to be given equal weight in each case. In this case, I place significant weight on the fact that the Applicant did not advance any grounds of appeal that demonstrate that he has a reasonable chance of success. This is a critical element of the application for leave to appeal. Without this, even though he had a continuing intention to appeal, and a reasonable explanation for his delay, this application fails.

## **CONCLUSION**

[20] An extension of time to make an Application is refused.

*Valerie Hazlett Parker*  
Member, Appeal Division