

Citation: *M. M. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 66

Appeal No. AD-13-1110

BETWEEN:

**M. M.**

Applicant

and

**Minister of Human Resources and Skills Development**

Respondent

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**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: April 15, 2014

## **DECISION**

[1] The Tribunal refuses the application to extend the time for filing and application for leave to appeal to the Appeal Division of the Social Security Tribunal.

## **BACKGROUND & HISTORY OF PROCEEDINGS**

[2] On October 31, 2012, the Review Tribunal found that the Applicant had a severe and prolonged disability in February 2011. The Review Tribunal determined that Canada Pension Plan disability benefits should commence effective June 2011.

[3] The Applicant seeks leave to appeal the decision of the Review Tribunal (the “Decision”), as she is of the position that disability benefits should have commenced effective February 2011. It is unclear when the Decision was communicated to the Applicant. Correspondence indicates that the Decision was delivered to her and to her representative by registered mail, on or about October 31, 2012. The Applicant advised in an e-mail dated April 3, 2013 that she received the Decision on December 18, 2012.

[4] The Applicant wrote to Service Canada on February 28, 2013 to dispute the commencement date of disability benefits. She was apparently advised by Service Canada that she should appeal the decision to the Pension Appeals Board and that her appeal would likely be accepted, despite the fact that an appeal was now beyond the 90- day deadline for filing.

[5] The Applicant re-directed her dispute. She submitted an appeal by e-mail on April 3, 2013 to the Pension Appeals Board and it was accepted as an Application Requesting Leave to Appeal and Notice to Appeal (the “Application”) by the Appeal Division of the Social Security Tribunal (the “Tribunal”) on April 4, 2013.

## **ISSUE**

[6] Should the Appeal Division extend the time for filing of the Application?

[7] Does the appeal have a reasonable chance of success?

## **THE LAW**

[8] According to subsection 57(2) of the *Department of Employment and Social Development (DESD) Act*, “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”.

[9] According to subsections 56(1) and 58(3) of the Act, “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal”.

[10] Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

## **APPLICANT’S SUBMISSIONS**

### **Late Filing of Application**

[11] The Applicant explains that her Application was late as she was unaware that she was required to appeal the Decision. She had directed her dispute over the commencement date of disability benefits to Service Canada, but after learning that she was (at that time) required to initiate an appeal of the Decision with the Pension Appeals Board, she sent her e-mail of April 3, 2013 to the Pension Appeals Board.

### **Application for Leave**

[12] The Applicant has not made any submissions as to why her appeal might have a reasonable chance of success, nor how the Review Tribunal might have erred in its Decision.

## **RESPONDENT’S SUBMISSIONS**

[13] The Respondent has not filed any written submissions.

## ANALYSIS

### **Late Filing of Application**

[14] In *Canada (Minister of Human Resources Development) v. Gattelaro*, 2005 FC 833, the Court set out the four criteria which the Appeal Division should consider and weigh in determining whether to extend the time period beyond 90 days within which an applicant is required to file his application for leave to appeal, as follows:

1. A continuing intention to pursue the application or 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.

[15] For the purposes of this leave application, I am going to accept that the Applicant did not receive the Decision until December 18, 2012.

[16] I am persuaded that the Applicant had a continuing intention to pursue the application, that there is a reasonable explanation for the delay and that there is no prejudice to the other party in allowing the extension, as she had been communicating with Service Canada early on after receiving the Decision, and as the delay involved is relatively brief.

[17] I turn next to whether the matter discloses an arguable case. I will deal with this in the context of the leave application.

### **Application for Leave**

[18] Although a leave to appeal application is a first, and lower, hurdle to meet than the one that must be met on the hearing of the appeal on the merits, some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[19] Subsection 58(1) of the DESD Act sets out the grounds of appeal as being limited to 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.

[20] For our purposes, the decision of the Review Tribunal is considered to be a decision of the General Division.

[21] The Applicant has not provided any reasons as to how the Review Tribunal might have erred. The Applicant has not cited any errors of law or erroneous findings of fact upon which the Review Tribunal might have based its decision, nor how it might have failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.

[22] In any event, the *Canada Pension Plan* stipulates that the earliest date that disability benefits can be payable is generally the fourth month after an applicant became disabled.

Section 69 of the *Canada Pension Plan* reads:

*“Commencement of pension – ... where payment of a disability pension is approved, the pension is payable for each month commencing with the fourth month following the month in which the applicant became disabled, except that where the applicant was, at any time during the five-year period next before the month in which the applicant became disabled as a result of which the payment is approved, in receipt of a disability pension payable under this Act or under a provincial pension plan...”*

Finally, the Applicant has enquired as to how the monthly disability benefit is calculated. Section 56 of the *Canada Pension Plan* sets out the formula for determining the monthly disability pension for individual contributors.

[23] The *Canada Pension Plan* does not confer any discretion to deviate from the calculation of either the commencement date that disability benefits become payable or the amount of disability benefits which are payable.

[24] As the Applicant's reasons disclose no grounds of appeal for me to consider, I am unable to find that the appeal has a reasonable chance of success.

[25] As the Applicant has not shown that she has an arguable case, I am unprepared to exercise my discretion and extend the time within which an application for leave to appeal is to be made.

[26] To be clear, even if an extension of time had been granted, the Application requesting leave to appeal would have nonetheless been refused, as the Applicant has not shown that she has an arguable case or that the appeal has a reasonable chance of success.

## **CONCLUSION**

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

*Janet Lew*

Member, Appeal Division