

Citation: *A. T. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 114

Appeal No. AD-13-1084

BETWEEN:

A. T.

Applicant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division Jurisdiction Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: May 21, 2014

DECISION

[1] The Social Security Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

BACKGROUND & HISTORY OF PROCEEDINGS

[2] The Applicant seeks leave to appeal a decision of the Commissioner of Review Tribunals Canada Pension Plan/Old Age Security (the “Commissioner”). On October 4, 2012, the Commissioner wrote to the Applicant in regards to her request to submit an appeal concerning the decision of Human Resources and Skills Development Canada to deny her application for *Canada Pension Plan* disability benefits. After considering a number of factors, the Commissioner denied the Applicant’s request for an appeal to a Review Tribunal, on the basis that her appeal was late. The Commissioner decided as follows:

Under subsection 82(1) of the *Canada Pension Plan* legislation, a person who is not satisfied with a decision of the Minister, following a reconsideration of the person's benefit eligibility has ninety (90) days to appeal the Minister's decision to a Review Tribunal. This provision of the legislation also provides the Commissioner with the discretion to accept an appeal that is made late (i.e. after the 90-day time limit), provided the circumstances are appropriate for the exercise of that discretion.

In your case, the Minister notified you by letter dated May 24, 2012 that it had denied your application for a CPP Disability benefit following a request for reconsideration. Your appeal was received by this Office on September 7, 2012. We have calculated that your appeal was received approximately 16 days over the 90-day appeal period.

. . .

Having weighed the above factors, I have determined that I should not exercise my discretion and accept your appeal beyond the 90-day appeal period. In this case, while the delay is not significant, no reasonable explanation has been provided. Most importantly, I am not satisfied you present an arguable case and that the Minister would not be prejudiced should I grant an extension of time to appeal.

I regret that I cannot be more helpful. In view of my decision not to accept this late appeal, your appeal file with this Office is now closed.

[3] On the same date, the Office of the Commissioner also notified the Respondent that the appeal to the Review Tribunal had been closed.

[4] The Applicant submitted a letter bearing a facsimile transmission date of January 1, 2002, along with a copy of the Commissioner's letter of October 4, 2012, to the Social Security Tribunal on March 9, 2013. In her letter, she stated, "I am sending these papers by fax as I was told I had sent in the wrong papers originally. . . This is the first time I am applying for disability pension and I have no idea what I am supposed to do".

[5] I presume that the date of January 1, 2002 on the Applicant's letter represents a default date for the facsimile, given that the initial Application for Disability Benefits was completed on July 18, 2011. I presume also that the Applicant's reference to the "first time" refers to the first time she has sought to appeal the Commissioner's decision.

[6] The Applicant filed an Application for Leave to Appeal and Notice of Appeal (the "Leave Application") with the Appeal Division of the Social Security Tribunal on April 17, 2013. The Leave Application invites applicants to explain any delays in filing the Leave Application to the Social Security Tribunal. In this case, the Applicant explained that she had been, "about 2 weeks late ... and that was because [she] was very ill at the time and could not get out the appeal in time."

[7] The Leave Application also invites applicants to explain how the appeal has a reasonable chance for success. She responded that,

"All the information I sent in was correct and true, and [I] was not given a proper or full consideration for Canada Disability Pension Benefits. Also, given all the information I have sent in, I feel I qualify completely for these Benefits. I also feel that I was not completely given the proper attention to my application."

[8] The Applicant filed a second Application for Leave to Appeal and Notice of Appeal (the "Second Leave Application") on August 16, 2013. She explained that she had been late in filing the appeal because,

"...I cannot always function properly and am not always feeling well, so when I am like that, I cannot do things correctly and wait until I can do things correctly before attempting to do them, to make sure things are done right."

[9] It is unclear why the Applicant filed this Second Leave Application when she had already filed a similar application on April 17, 2013.

[10] The Applicant also provided reasons for appeal in this Second Leave Application.

[11] The Social Security Tribunal acknowledged receipt of the Leave Application by letter dated December 6, 2013. The Director of Operations for the Social Security Tribunal wrote to the Applicant as follows:

This letter is to confirm that we have received your Application to Appeal to the Appeal Division of the Social Security Tribunal. It appears to have been filed more than 90 days after the date that you received the decision from the General Division. (*sic*)

The Tribunal has the authority to extend the appeal period under certain circumstances, but in no case can an extension be granted if more than one year has passed since you received the decision from the General Division. A Member of the Appeal Division of the Social Security Tribunal will review the file to determine whether or not an extension of time should be allowed.

[12] In other words, the Applicant was late in filing both leave applications.

ISSUES

[13] Does the Appeal Division of the Social Security Tribunal have jurisdiction to consider an appeal of the decision of the Commissioner of Review Tribunals, refusing an extension of time to appeal to the Review Tribunal?

[14] If the Appeal Division has jurisdiction, should the Appeal Division extend the time for filing of the Leave Application?

THE LAW

[15] Section 55 of the *Department of Employment and Social Development (DESD) Act* provides that “any decision of the General Division may be appealed to the Appeal Division...”

[16] Subsections 56(1) and 58(3) of the DESD Act provide that “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”.

ANALYSIS

[17] Before I can consider whether the Appeal Division ought to extend the time for filing of the Leave Application, I need to satisfy myself that the Appeal Division has jurisdiction to hear this matter. I am not persuaded that it does.

[18] Subsection 82(1) of the *Canada Pension Plan* was amended and came into force on April 1, 2013. Subsection 82(1) of the *Canada Pension Plan* read:

82. Appeal to Review Tribunal – (1) A party who is dissatisfied with a decision of the Minister made under section 81 or subsection 84(2), or a person who is dissatisfied with a decision of the Minister made under subsection 27.1(2) of the *Old Age Security Act*, or, subject to the regulations, any person on their behalf, may appeal the decision to a Review Tribunal in writing within 90 days, or any longer period that the Commissioner of Review Tribunals may, either before or after the expiration of those 90 days, allow, after the day on which the party was notified in the prescribed manner of the decision or the person is notified in writing of the Minister’s decision and of the reasons for it.

[19] Section 82 of the *Canada Pension Plan* now reads:

82. Appeal to Social Security Tribunal – A party who is dissatisfied with a decision of the Minister made under section 81, including a decision in relation to further time to make a request, or subject to the regulations, any person on their behalf, may appeal the decision to the Social Security Tribunal established under section 44 of the *Department of Employment and Social Development Act*.

[20] The Social Security Tribunal is a statutory creature and derives its authority from the enabling legislation. I can see nothing in the *Canada Pension Plan* which provides a right of appeal to the Appeal Division. Section 55 of the DESD Act limits the jurisdiction of the Appeal Division to appeals of decisions of the General Division.

[21] Neither the DESD Act nor the *Canada Pension Plan* confers any authority upon the Appeal Division of the Social Security Tribunal to hear appeals of decisions of the Commissioner made pursuant to subsection 82(1) of the *Canada Pension Plan* prior to April 1, 2013. The Applicant's only recourse is to the Federal Court of Canada.

CONCLUSION

[22] Given that I have no jurisdiction to hear this matter, I decline to consider the Applicant's request to extend the time for filing of the leave application to the Social Security Tribunal.

Janet Lew

Member, Appeal Division