

Citation: *B. G. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 110

Appeal No: AD-13-780

BETWEEN:

B. G.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: VALERIE HAZLETT PARKER

DATE OF DECISION: May 16, 2014

DECISION

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

INTRODUCTION

[2] On June 17, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable. The Applicant filed an application for leave to appeal (the “Application”) with the Appeal Division of the Social Security Tribunal (the “Tribunal”) on November 12, 2013. This was after the time to file the Application had expired.

ISSUE

[3] The Tribunal must decide whether to extend time to file the Application.

THE LAW

[4] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development (DESD) 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”.

[5] 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.

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

[7] 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”.

[8] Section 57 of the DESD Act provides that the Appeal Division may extend the time within which an application for leave to appeal may be made, but in no case may it be more than one year after the day on which the decision was communicated to the Applicant.

SUBMISSIONS

[9] The Applicant submitted that the Application was filed with the SST after the time to do so had expired as her paperwork was left in a room, and not discovered until the Applicant was cleaning the room some time later.

[10] The Applicant submitted that she should be granted leave to appeal because:

- a) She has always suffered from pain and fibromyalgia which are clearly documented;
- b) She only returned to the paid workforce because of dire financial constraints, and had to stop because of her pain;

[11] The Respondent made no submissions.

ANALYSIS

[12] In assessing the request to extend time for leave to appeal, the Tribunal is guided by decisions of the Federal Court. In *Canada (Minister of Human Resources Development) v. Gatellaro*, 2005 FC 883 this Court concluded that the following factors must be considered and weighed when deciding this issue:

- a) A continuing intention to pursue the application;
- b) The matter discloses an arguable case;
- c) There is a reasonable explanation for the delay; and
- d) There is no prejudice to the other party in allowing the extension.

[13] The weight to be given to each of these 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.

[14] Furthermore, the Federal Court of Appeal has found that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[15] The Applicant did not provide any submissions specifically directed to the legal test to be met to obtain an extension of time to apply for leave to appeal. She wrote that the paperwork was misplaced for some time. From this I cannot conclude that the Applicant had a continuing intention to apply for leave to appeal, if she misplaced the documents.

[16] I am persuaded that the Appellant had a reasonable explanation for the delay. Her son passed away during this time, and she had to attend to his affairs.

[17] The Applicant made no submissions regarding the issue of prejudice caused by her delay. I make no finding in that regard.

[18] I find that the Applicant has not put forward any argument that has a reasonable chance of success on appeal. Section 58 of the DESD Act is narrow in scope, and to have a reasonable chance of success on appeal, the Applicant must put forward arguments that fall within its provisions. The Applicant has not alleged that the Review Tribunal made any error in law or in fact, nor that it breached natural justice.

[19] The Review Tribunal decision is clear that the Applicant has suffered with fibromyalgia for a long time. It also sets out the Applicant's testimony that she only returned to work because of dire financial circumstances. The repetition of these arguments is not a ground of appeal within section 58 of the DESD Act.

[20] I place significant weight on the fact that her arguments do not demonstrate a reasonable chance of success on appeal. This is an important element of the legal test to be granted leave to appeal. In addition, I am not satisfied that she had a continuing intention to appeal the Review Tribunal decision. For these reasons I am not persuaded that the Applicant has met the legal test to be granted an extension of time to apply for leave to appeal in this matter.

CONCLUSION

[21] The Application is refused.

Valerie Hazlett Parker
Member, Appeal Division