

Citation: *M. M. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 126

Appeal No: AD-13-92

BETWEEN:

M. M.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

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

SOCIAL SECURITY TRIBUNAL MEMBER: VALERIE HAZLETT PARKER

DATE OF DECISION: May 30, 2014

DECISION

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

INTRODUCTION

[2] On September 17, 2012 a Review Tribunal determined that a Canada Pension Plan disability pension not payable. The Applicant received this decision on September 18, 2012. He filed an application for leave to appeal (the “Application”) with the Appeal Division of the Social Security Tribunal (the Tribunal) on December 16, 2013 after the time to do so had expired.

ISSUE

[3] The Tribunal must decide whether to grant an extension of time for leave to appeal.

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 late because he had become physically and emotionally taxed after the motor vehicle accident in 2009, and he was overwhelmed with all the lawsuits that resulted from the accident.

[10] The Applicant argued that he should be granted leave to appeal because he has received a new diagnosis for his condition since the Review Tribunal hearing. The Appellant also argued that the Review Tribunal did not place sufficient weight on the report of Dr. Harth, who disagreed with other medical experts regarding his diagnosis and prognosis.

[11] The Respondent made no submissions.

ANALYSIS

[12] Section 57(2) of the DESD Act is clear. It allows the Appeal Division of the Tribunal to extend the time for an appeal to be made. In no case, however, can such an extension be more than one year after the day on which the decision was communicated to the Applicant. In this case, the Applicant stated that he received the Review Tribunal

decision on September 18, 2012. He filed the Application on December 16, 2013. This date is more than one year after the decision was communicated to him. Therefore, his request for an extension of time for leave to appeal fails, and the Application is refused.

Valerie Hazlett Parker

Member, Appeal Division