

Citation: *L. B. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 120

Appeal No: AD-13-790

BETWEEN:

L. B.

Applicant

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 27, 2014

DECISION

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

INTRODUCTION

[1] On February 7, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was payable, with the Applicant found to be disabled in December 2011. The Applicant filed an application for leave to appeal (the “Application”) with the Appeal Division of the Social Security Tribunal (the “Tribunal”) on July 10, 2013. It was received at the Pension Appeals Board on June 27, 2013. The Application was received after the time to request leave to appeal had expired.

ISSUE

[2] The Tribunal must decide whether the Applicant should be granted additional time to apply for leave to appeal.

THE LAW

[3] 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”.

[4] 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.

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

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

[7] 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

[8] The Applicant submitted that she should be found disabled in January 2011, not December 2011 as her back pain existed in January 2011 and was confirmed by an MRI at that time.

[9] The Respondent made no submissions.

ANALYSIS

[10] 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.

[11] 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.

[12] 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.

[13] The Applicant made no submissions regarding why the Application was late. I therefore cannot conclude that she had a continuing intention to appeal this matter, that she had a reasonable explanation for the delay or that there would be no prejudice to the other party because of the delay.

[14] The Applicant disagreed with the date that she was found disabled by the Review Tribunal. She argued that she was disabled at a prior date, January 2011, and that this was supported by the medical evidence. She did not allege that the Review Tribunal made an error of law, or an error of fact in a perverse or capricious manner. She referred to this as an “oversight”. I find that the Review Tribunal decision summarized the medical and oral evidence before it. It weighed this evidence in reaching the conclusion it did regarding the date of disability, and explained its reasoning. It made no error in law or in fact, and did not breach natural justice or its duty of fairness. The Applicant’s disagreement with the Review Tribunal’s decision is not an argument that has a reasonable chance of success on appeal.

CONCLUSION

[15] The Application is refused as the Applicant has not met the legal test for time to be extended.

Valerie Hazlett Parker
Member, Appeal Division