

Citation: *S. D. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 123

Appeal No: AD-13-1109

BETWEEN:

S. D.

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 28, 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 March 18, 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 December 4, 2013 after the time to do so had expired.

ISSUE

[3] The Tribunal must decide whether the Applicant should be granted additional time to apply 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 she ought to be granted an extension of time to apply for leave to appeal because her depression increased significantly, to the point of incapacity for a number of months after the Review Tribunal decision was made. She was unable to leave her home, experienced debilitating insomnia and frequent severe panic attacks, especially at the thought of the appeal process.

[10] The Applicant also submitted that her physical and mental health had deteriorated since the Review Tribunal decision was made. She underwent surgery on her left foot after the Review Tribunal hearing, which was not considered by the Review Tribunal. She also argued that the surgery on her right foot was a complicated procedure and this was not reflected in the Review Tribunal decision.

[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] I am satisfied that the Applicant has a reasonable explanation for the delay in applying for leave to appeal. The Applicant suffers from depression and has panic attacks. She argued that these conditions prevented her from completing this legal step for some months. I accept that explanation.

[16] The Applicant did not provide any submissions regarding whether she had a continuing intention to pursue the application for leave to appeal, or prejudice to the other party. Therefore I can make no findings on these factors.

[17] I am not satisfied that the Applicant has demonstrated that she has a reasonable chance of success on appeal. The DESD Act sets out narrow grounds of appeal. The Applicant has not made any argument that falls within any of them. She did not allege that the Review Tribunal made any error in law or in fact, or that it breached natural justice or its duty of fairness. The fact that she disagrees with the decision made is not a ground of appeal that has a reasonable chance of success on appeal.

[18] The Applicant also argued that her physical and mental health have declined significantly. This is not a ground of appeal that I can consider under the DESD Act. If she has raised this in an effort to rescind or amend the decision of the Review Tribunal, she must comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal*

Regulations, and she must also file an application to rescind or amend the decision with the same Division that made the decision (in this case, the General Division of the Social Security Tribunal). There are additional requirements that an Applicant must meet to succeed in an application to rescind or amend a decision. Section 66 of the DESD Act also requires an applicant to demonstrate that the new fact is material and that it could not have been discovered at the time of the hearing with the exercise of reasonable diligence. The Appeal Division in this case has no jurisdiction to rescind or amend a decision based on new facts, as it is only the Division which made the decision which is empowered to do so. This is not a re-hearing of the merits of the claim.

[19] The Applicant has met one part of the legal test to be granted an extension of time to apply for leave to appeal. In this case, this is insufficient to be granted this relief. I place more weight on the fact that she has not put forward any argument that has a reasonable chance of success on appeal. Without this, in this case, her request for an extension of time must fail.

CONCLUSION

[20] The Application is refused for the reasons set out above.

Valerie Hazlett Parker
Member, Appeal Division