

Citation: *M. P. v. Minister of Employment and Social Development*, 2014 SSTAD 194

Appeal No: AD-14-133

BETWEEN:

M. P.

Appellant

and

**Minister of Employment and Social Development
(Formerly 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: August 11, 2014

DECISION

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

INTRODUCTION

[2] On December 19, 2012, 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 (Tribunal) on April 17, 2014. The Applicant first wrote to the Tribunal regarding this application on February 6, 2014.

ISSUE

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

[4] If an extension of time for leave to appeal is granted, the Tribunal must also decide whether the appeal has a reasonable chance of success.

THE LAW

[5] 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”.

[6] 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.

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

[8] 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”.

[9] 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

[10] The Applicant submitted the following in support of the Application:

- a) Her Application was late because correspondence was directed to the incorrect address;
- b) She continues to have significant medical problems; and
- c) Her insurance company believes that she is eligible for a Canada Pension Plan disability pension.

[11] The Respondent made no submissions.

ANALYSIS

[12] I must first deal with the issue whether the Applicant should be granted an extension of time to seek leave to appeal. The DESD Act is clear. Section 57 states that in no case may an Application be accepted more than one year after the decision was communicated to the Applicant. The Review Tribunal decision is dated December 19, 2012. The Applicant did not set out in the Application when she received it. It was sent to her by regular mail, at the address she provided to the Office of the Commissioner of Review Tribunals. The Office of the Commissioner of Review Tribunals was under no obligation to ensure that the document was sent to a different address, unless that address was supplied to it by the Applicant. Therefore, I find that the Applicant would have received the decision before February 2013.

[13] The Applicant first contacted the Tribunal by letter received February 6, 2014. The Application was filed on April 17, 2014. Both of these documents were received more than one year after the decision was communicated to the Applicant. On this basis, leave to appeal cannot be granted.

[14] If I am wrong on this, I must consider whether the Applicant should be granted leave to appeal based on the arguments she raised in the Application.

[15] Although a leave to appeal application is a first, and lower, hurdle to meet than the one that must be met on the hearing of the appeal on the merits, some arguable ground upon which the proposed appeal might succeed is needed in order for leave to be granted: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC).

[16] 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.

[17] The Applicant submitted that she should be granted leave because she continues to have medical problems which she listed in the Application. The Applicant also argued that leave to appeal should be granted because her insurance company believes that she is eligible for a Canada Pension Plan disability pension. Section 58 of the DESD Act sets out very narrow grounds of appeal that may be considered. The arguments put forward by the Applicant do not fall within these grounds. Therefore, leave to appeal is refused.

Valerie Hazlett Parker
Member, Appeal Division