

Citation: *M. M. v. Minister of Employment and Social Development*, 2014 SSTAD 237

Appeal No: AD-13-634

BETWEEN:

M. M.

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: September 19, 2014

DECISION

[1] The Tribunal grants an extension of time to file the Application for leave to appeal.

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

INTRODUCTION

[3] On March 7, 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 June 11, 2013.

ISSUE

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

[5] The Tribunal must also decide whether the appeal has a reasonable chance of success.

THE LAW

[6] 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”.

[7] 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.

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

[9] 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”.

[10] 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

[11] The Applicant made no submissions regarding an extension of time to file the Application.

[12] The Applicant submitted that he should be granted leave to appeal because:

- a) He disagreed with the decision to deny his claim;
- b) Not enough weight was given to the medical evidence that was presented;
- c) He listed all of the activities that he had to stop participating in due to his disability;
- d) Any work he completed after his injury was done because he “had to survive”; and
- e) He recited the history of his claim with Workers’ Compensation Board.

[13] The Respondent made no submissions.

ANALYSIS

Extension of Time to File the Application

[14] In assessing whether 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.

[15] 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.

[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.

[17] The Application was filed with the Tribunal six days after the time to do so had expired. Neither party made submissions about the late filing of the Application.

[18] As the Application was filed with the Tribunal within one week of the time permitted to do so I accept that the Applicant had a continuing intention to pursue the application, and that there would be no prejudice to the Respondent because of the delay.

[19] The Applicant provided no explanation for his delay in filing the Application, so I can make no finding on this.

[20] In this case I am prepared to extend the time to file the Application. The Applicant had a continuing intention to pursue the matter, and with such a short delay there would be no prejudice to the Respondent.

[21] For the reasons set out below, however, I am not persuaded that the Application has a reasonable chance of success on appeal.

Reasonable Chance of Success on Appeal

[22] Section 58 of the DESD Act is clear. In order for an Application to have a reasonable chance of success, the Applicant must point to an error of fact made by the Review Tribunal in a capricious or perverse manner or without regard to the material before it, an error in law, or a breach of the principles of natural justice. The Application does not meet this legal test.

[23] The Applicant wrote in the Application that he did not agree with the conclusion reached by the Review Tribunal. Mere disagreement with the Review Tribunal decision is not a ground of appeal that has a reasonable chance of success.

[24] The Applicant also alleged that the Review Tribunal did not give sufficient weight to the medical evidence that was before it. The Review Tribunal decision summarized the medical evidence, and considered it in reaching the conclusion it did. The Appellant asks this Tribunal to reweigh the evidence to reach a different conclusion. In *Gaudet v. Attorney General of Canada* 2013 FCA 254 the Federal Court of Appeal concluded that a reviewing tribunal is not to retry the issues, but to assess whether the outcome was acceptable and defensible on the facts and the law. The conclusion reached by the Review Tribunal in this case was acceptable and defensible on the facts and the law. Therefore, this argument does not have a reasonable chance of success on appeal.

[25] Finally, the Applicant provided a list of activities that he can no longer do because of his disability, and a history of his dealings with the Workers' Compensation Board. This evidence was before the Review Tribunal, and was considered by it. The mere repetition of evidence is not a ground of appeal that has a reasonable chance of success.

[26] For these reasons, I find that the Applicant has not presented any argument that has a reasonable chance of success on appeal.

CONCLUSION

[27] The time to file the Application is extended.

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

Valerie Hazlett Parker

Member, Appeal Division