

Citation: *L. D. v. Minister of Employment and Social Development*, 2014 SSTAD 239

Appeal No: AD-14-260

BETWEEN:

L. D.

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 refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On January 8, 2014, the General Division of the Social Security Tribunal (the “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 Tribunal on May 23, 2014, which was after the time to do so had expired.

ISSUE

[3] The Tribunal must decide whether to grant an extension of time to file the Application.

[4] If an extension of time to file the Application is granted, the Tribunal must 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] 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 in support of the Application that the General Division did not consider the evidence properly, that the Applicant is old, does not speak English well, and should receive CPP benefits. The Applicant subsequently filed medical reports to support his claim.

[10] The Applicant later submitted a letter explaining that the Application was late because his representative did not understand the process by which appeals were to be transferred from the Pension Appeals Board to the Social Security Tribunal.

[11] The Respondent made no submissions.

ANALYSIS

[12] The Applicant’s request to extend the time to file the Application is considered in light of the decision of the Federal Court *in Canada (Minister of Human Resources Development) v. Gatellaro*, 2005 FC 883. This decision concluded that the following factors must be considered and weighed when deciding whether to grant an extension of time to file an application for leave to appeal:

- 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] The Federal Court of Appeal has also concluded 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] The Application was filed 45 days after the time to do so had expired. The explanation for the delay was that the Applicant's representative was unsure of the process by which appeals from a Review Tribunal decision were to be transferred from the Pension Appeals Board to the Social Security Tribunal. The hearing in this matter was not before a Review Tribunal, but the General Division of the Social Security Tribunal. The General Division decision was dated January 8, 2014, some nine months after this Tribunal began its work. At that time the process to file the Application was clear as was the time within which such an application had to be filed with the Tribunal. I do not find that this was a reasonable explanation for the delay in this matter.

[16] As the Applicant made no submissions with respect to prejudice to the other party, whether he had a continuing intention to appeal or any other factor, I can make no findings in that regard.

[17] The Applicant argued that he should be granted leave to appeal because the General Division did not consider the evidence properly. He provided no details regarding this. It is therefore unclear what is meant by this argument. In *Pantic v. Canada (Attorney General)*, 2011 FC 591, the Federal Court concluded that a ground of appeal cannot be said to have a reasonable chance of success if it is not clear.

[18] It may be that the Applicant is asking this Tribunal to reweigh the evidence that was before the General Division to reach a different conclusion. In *Simpson v. Canada (Attorney General)*, 2012 FCA 82 the Federal Court concluded that this is the province of the trier of fact. The tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the Review Tribunal who made the findings of fact. Therefore, this argument does not have a reasonable chance of success on appeal.

CONCLUSION

[19] For these reasons, I am not persuaded by the Applicant that the time to file the Application should be extended. I am also not persuaded that leave to appeal should be granted.

[20] The Application is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division