

Citation: *J. C. v. Minister of Employment and Social Development*, 2014 SSTAD 339

Appeal No: AD-14-520

BETWEEN:

J. C.

Applicant

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: November 17, 2014

DECISION

[1] The Tribunal refuses an extension of time to file the application for leave to appeal and dismisses the application for leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On May 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 September 29, 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 apply for leave to appeal.

[4] The Tribunal must also decide 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

[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 :

- a) She did not seek leave to appeal the General Division decision within the time to do so because she was unaware of this legal option;
- b) She believes that her medical condition is prolonged, and will not improve;
- c) She has attempted every available treatment without improvement of her condition, and must rely on medication for some pain relief until it no longer works;
- d) Her medical conditions are now contributing to other problems for her;
- e) If she were to go to a job, she would be dismissed for missing time due to her pain; and
- f) She provided additional medical reports from a MRI scan and an ultrasound;

[10] The Respondent made no submissions.

ANALYSIS

[11] First, I must assess the Applicant’s request to extend time for leave to appeal. I am guided by decisions of the Federal Court in this regard. 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) There is no prejudice to the other party in allowing the extension;
- c) There is a reasonable explanation for the delay; and
- d) The matter discloses an arguable case.

[12] 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).

[13] 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.

[14] The Applicant filed the Application 46 days after the time to do so had expired. I find that she had a reasonable explanation for the delay, that she was not aware of this legal option.

[15] As the Applicant was unaware of the legal option to seek leave to appeal, I am not satisfied that she had a continuing intention to pursue this appeal throughout the period of delay. She could hardly intend to take a legal step that she was unaware of at the time.

[16] There was no evidence of any prejudice to a party as a result of the relatively short delay in seeking leave to appeal in this matter. I am satisfied that there would be no such prejudice.

[17] The most significant factor to consider in this case regarding the request to extend the time to seek leave to appeal is whether the Applicant has presented an arguable case, or a legal argument that has a reasonable chance of success on appeal. Without presenting a

ground of appeal that may have a reasonable chance of success, the application for leave to appeal cannot succeed and so there is also no reason to extend the time to file the application.

[18] The Applicant raised a number of arguments to support the leave to appeal. First, she argued that her medical condition is prolonged and not expected to improve. Evidence regarding the prolonged nature of her disability was before the General Division. This argument does not point to any error of fact, error in law, or breach of natural justice made by the General Division. It does not have a reasonable chance of success on appeal.

[19] The Applicant also argued that she had tried a number of treatments without success, now relies on medication until it no longer works, and her disability is now causing her other difficulties. No matter how tragic these facts are, they are not grounds of appeal that have a reasonable chance of success. They do not point to any error made by the General Division.

[20] The Applicant also provided copies of two additional medical testing reports. Section 58 of the DESD Act sets out the only grounds of appeal that I can consider. The provision of additional medical information is not one of these grounds. Hence, the production of the reports is not a ground of appeal that has a reasonable chance of success on appeal.

[21] Finally, the Applicant argued that if she went to work she would be dismissed for time off due to pain. This argument also does not point to any error in law, in fact or any breach of natural justice by the General Division. Therefore, it does not have a reasonable chance of success on appeal.

[22] Because the Applicant did not have a continuing intention to appeal this matter, and she has not presented any ground of appeal that may have a reasonable chance of success on appeal, I am not prepared to extend the time for her to apply for leave to appeal to the Appeal Division. Also, the application for leave to appeal must be dismissed because the Applicant has not presented a ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

[23] The Application is dismissed for these reasons.

Valerie Hazlett Parker
Member, Appeal Division