Citation: *M. F. v. Minister of Employment and Social Development,* 2015 SSTAD 110

Appeal No. AD-14-586

BETWEEN:

M. F.

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: Hazelyn Ross

DATE OF DECISION: January 30, 2015

DECISION

[1] The Application for an Order extending the time for filing the Application is allowed.

[2] The Application for Leave to Appeal the General Division decision is refused.

BACKGROUND

[3] In a decision issued on June 19, 2014[1], a Member of the General Division of the Social Security Tribunal, (the Tribunal), denied the Applicant's claim for a *Canada Pension Plan*, (CPP), disability pension. On November 27, 2014 the Tribunal received a request from the Applicant for leave to appeal the General Division decision, (the Application). At the same time the Applicant included an application for an Order extending the time for filing the Application.

GROUNDS OF THE APPLICA TION

[4] The Applicant states that her medical conditions prevent her from working and that the General division decision is unfair. This is the only ground that the Applicant has advanced as the basis of her Application for Leave.

ISSUES

[5] Two issues are before the Tribunal. First, the Tribunal must decide whether or not to extend the time for filing the Application. If the Tribunal does decide to grant the requested extension, the Tribunal must then decide whether the appeal has a reasonable chance of success. For the reasons set out below, the Tribunal grants the extension of time to file the Application. However, the Tribunal is not satisfied that the appeal has a reasonable chance of success.

THE APPLICABLE STATUTORY PROVISIONS

[6] Ss. 57(2) of the *Department of Employment and Social Development (DESD) Act* provides that the Appeal Division of the Tribunal may extend the time for bringing an Application for Leave to Appeal. The ss. provides an upper limit of one year for bringing the application and, by analogy, for granting an extension to the time limit.

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[1] Appeal No. GT 125247.

[7] On an Application for Leave to Appeal the hurdle that an Applicant must meet is a first and lower one than that which must be met on the hearing of the appeal on the merits. However, to be successful, the Applicant must make out some arguable case[2] or show some arguable ground upon which the proposed appeal might succeed. In *St-Louis*[3], Mosley, J. stated that the test for granting a leave application is now well settled. Relying on *Calihoo*,[4] he reiterated that the test is "whether there is some arguable ground on which the appeal might succeed." He also cautioned against deciding, on a Leave Application, whether or not the appeal would succeed.

[8] 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.

[9] DESD ss. 58(2) provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

ANALYSIS

Should the Tribunal extend the time for making the Application?

[10] At the time the Applicant filed the Application she was aware that there was a time limit for filing the Application. She explained that she filed late because she had been waiting for additional medical documentation to attach to the Application.[5]

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[2] *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).
[3] *Canada (A.G.) v. St. Louis*, 2011 FC 492
[4] *Calihoo v. Canada (Attorney General)*, [2000] FCJ No. 612 TD para 15.
[5] Application requesting leave to appeal to the Appeal Division, Question 3, Box B (reasons for late appeal).

[11] The Tribunal must decide whether the Applicant has provided a satisfactory explanation for the delay. In *Gattelaro,*[6] the Federal Court stated that in exercising the authority to extend the time limit for leave to appeal, a Tribunal Member must consider the following criteria:

- Whether there was a continuing intention to pursue the application or appeal;
- Whether the matter discloses an arguable case;
- There is a reasonable explanation for the delay; and
- Whether there is prejudice to the other party in allowing the extension.

[12] But for the fact that the Applicant is represented by a relative, who appears to be neither a lawyer nor a licenced paralegal, the Tribunal would not find the Applicant's explanation satisfactory. However, in all the circumstances of the Applicant's case, where she may well be under-represented, the Tribunal finds that her reasons may evince a continuing desire to pursue her appeal. Further, the Tribunal finds that the delay is not overly long and the prejudice to the Respondent, if any, is minimal. Accordingly, the Tribunal finds that this is an appropriate case in which to extend the time for filing the Application.

[13] Having granted the extension to file the Application, the Tribunal must now determine whether the Applicant's stated reasons for appeal fall within any of the legislated grounds of appeal and whether any of them have a reasonable chance of success, before it can grant leave.

[14] The Tribunal has examined the General Division decision and the medical documents that were before the General Division in order to ascertain whether or not the General Division erred in its appreciation of the Applicant's medical conditions. The Tribunal has also examined the documentation the Applicant sent in to support her Application with the same purpose in mind. The Tribunal finds no reviewable error on the part of the General Division.

[15] The Tribunal finds that the General Division Member considered the totality of the medical evidence that was contained in the Tribunal file. The Tribunal also finds that the General Division Member correctly applied the law in determining whether or not, on or before the minimum qualifying period, (MQP), the Applicant was suffering from a severe and prolonged disability.

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[6] *Canada (Minister of Human Resources Development) v. Gattelaro,* 2005 FC 833

[16] The Applicant submits that the General Division decision is unfair. She argues that her medical conditions following her breast cancer surgery prevent her from pursuing regularly any substantially gainful occupation. Evidence of the Applicant's breast cancer surgery and its aftermath was before the General Division Member when she made her decision. However, the Member found that these conditions arose post-MQP and, therefore, they could not give rise to a pre-MQP severe and prolonged disability. Accordingly, the Member denied the appeal. The Tribunal is not persuaded that these circumstances give rise to any error on the part of the General Division Member.

[17] Furthermore, disagreeing with the decision is not a ground of appeal. The Applicant has not shown that the General Division Member based her decision on an erroneous finding of fact that she made in a perverse or capricious manner or without regard for the material before it. Neither has the Applicant shown that the General Division member failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; nor has the Applicant shown that the General Division Member erred in law in making her decision, whether or not the error appears on the face of the record.

[18] With respect to the documentation submitted by the Applicant, the Tribunal finds that this is additional information much of which did not exist prior to the hearing. Those medical records which existed prior to the May 2014 hearing were either discoverable with reasonable diligence or, in the Tribunal's view, would have had little impact on the General Division decision as they merely amplify the medical records that were already before the General Division.

CONCLUSION

[19] For the reasons set out above, the Tribunal is not satisfied that the appeal would have a reasonable chance of success. Accordingly, the Application for Leave to Appeal the General Division decision is refused.

Hazelyn Ross
Member, Appeal Division