

Citation: *F. H. v. Minister of Employment and Social Development*, 2015 SSTAD 315

Appeal No: AD-15-83

BETWEEN:

**F. H.**

Appellant

and

**Minister of Employment and Social Development  
(formerly Minister of Human Resources and Skills Development)**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION  
Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Valerie Hazlett Parker

DATE OF DECISION: March 6, 2015

## **DECISION**

[1] The time to file the Application for Leave to Appeal is extended.

[2] Leave to appeal to the Appeal Division of the Social Security Tribunal is refused.

## **INTRODUCTION**

[3] The Applicant applied for a *Canada Pension Plan* disability pension. He claimed that he was disabled by various physical restrictions, and had no training or experience in jobs that weren't physically demanding. The Respondent denied his claim initially and after reconsideration. The Applicant appealed to the Office of the Commissioner of Review Tribunals. Pursuant to the *Jobs, Growth and Long-term Prosperity Act* the matter was transferred to the General Division of the Social Security Tribunal on April 1, 2013. On October 27, 2014 the General Division found the Applicant disabled in May 2010.

[4] The Applicant sought leave to appeal from this decision. The Application Requesting Leave to Appeal to the Appeal Division was filed with the Tribunal after the time to do so had expired. The Appellant contended that he had filed the Application within the time permitted but that he sent it to Service Canada instead of the Tribunal. Regarding the appeal, he argued that he should have been found disabled in June 2009 when he applied for the disability pension, not May 2010.

[5] The Respondent did not file any submissions

## **ANALYSIS**

[6] In assessing the request 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.

[7] 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.

[8] In this case, the Applicant provided a copy of the letter that he sent to Service Canada requesting an appeal of the General Division decision. It was dated January 13, 2015 and received by Service Canada on January 20, 2015. Service Canada wrote to the Applicant on February 4, 2015 and advised him that his appeal should be filed with this Tribunal. He filed the Application promptly with the Tribunal, on January 20, 2015. From this, it is clear that the Applicant had a continuing intention to pursue the appeal and a reasonable explanation for the delay in doing so.

[9] I was not provided with any information on the issue of prejudice to either party so make no finding on that.

[10] The other factor to be considered in this case is whether the Applicant has presented an arguable case on appeal. The Federal Court of 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. This is the same legal test to decide if the Applicant should be granted leave to appeal to the Appeal Division of this Tribunal.

[11] Section 58 of the *Department of Employment and Social Development Act* sets out the only grounds of appeal that may be considered to grant leave to appeal a decision of the General Division (the section is set out in the Appendix to this decision).

[12] In this case, the General Division concluded that the Applicant was disabled in May 2010. This was the date that the Applicant stated he was no longer able to work in his application for CPP disability pension. In addition, the General Division set out the Applicant's work history. The decision stated that the Applicant worked at a gas station

until June 2009. He then worked at Tim Horton's "for about a year". Therefore, it appears that the Applicant worked until May 2010. The Applicant did not contend that the General Division made any error in its recitation of the evidence, or that there was any error in law or breach of the principles of natural justice. Therefore, the Applicant's argument does not have a reasonable chance of success on appeal.

## **CONCLUSION**

[13] I am satisfied that the Applicant should have time extended to file the Application for leave to appeal. He had a continuing intention to pursue the appeal and an explanation for his delay in doing so. Given the short time that the Application Requesting Leave to Appeal to the Appeal Division was late, it is difficult to imagine that there would be any prejudice to any party should the matter proceed. It is in the interests of justice to extend the time for the Applicant to file the Application.

[14] However, because he has not presented a ground of appeal that has a reasonable chance of success leave to appeal to the Appeal Division of this Tribunal is refused.

*Valerie Hazlett Parker*  
Member, Appeal Division

## **APPENDIX**

### **Department of Employment and Social Development Act**

58. (1) The only grounds of appeal are that

- (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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.