

Citation: *N. D. v. Minister of Employment and Social Development*, 2015 SSTAD 348

Appeal No. AD-15-93

BETWEEN:

N. 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: March 12, 2015

DECISION

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

INTRODUCTION

[2] The Appellant applied for a *Canada Pension Plan* disability pension. He claimed that he was disabled by depression and pain. The Respondent denied his application initially and after reconsideration. The reconsideration decision was made on November 13, 2012. The *Department of Employment and Social Development Act* (the Act) provides that an appeal from a reconsideration decision is to be made within 90 days of the decision being communicated to the Appellant. This time may be extended. The Appellant sought an extension of time to seek leave to appeal from this decision on October 16, 2013. The General Division of the Social Security Tribunal denied this extension of time on January 27, 2015.

[3] The Appellant sought leave to appeal from the General Division decision. He submitted that leave to appeal should be granted as he had explained the delay in applying and he had an arguable case on appeal. He also submitted that the delay was not inordinate, and relied on various court decisions to support his claim.

[4] The Respondent filed no submissions.

ANALYSIS

[5] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). Also, 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. v. Canada (Attorney General)*, 2010 FCA 63.

[6] Section 52(2) of the Act provides that the General Division may extend the time for an appeal, but in no case may an appeal be brought more than one year after the decision was communicated to an Appellant. The Appellant correctly referred to the

factors that are to be considered when deciding whether to extend the time for leave to appeal as set out in *Canada (Minister of Human Resources Development) v. Gattelaro*, 2005 FC 883. They are whether the Appellant a reasonable explanation for the delay, a continuing intention to appeal, has presented an arguable case on appeal, and whether the other party would be prejudiced.

[7] The Appellant argued that the test to extend the time for leave to appeal is a flexible one, and that it should be applied to ensure that justice is served. Time may be extended even if all the criteria set out in *Gattelaro* are not met. I agree with this statement of the law. The Appellant further argued that he had a reasonable explanation for the delay in applying, and that there was good reason to believe that his appeal would succeed.

[8] Section 58 of the 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). The Appellant did not allege that the General Division decision contained any error in law, any factual error made in a perverse or capricious manner, or without regard to the material before it, or that the principles of natural justice had been breached. These are the only grounds of appeal that can be considered under section 58 of the Act. That he could explain his delay in seeking leave to appeal and that he believed the appeal would succeed are not grounds of appeal under the Act.

[9] In addition, a decision to extend the time to file an application for leave to appeal is a discretionary one. It is to be given deference. In this case, the General Division decision reviewed the law and applied it to the facts before it. The reason for the decision is clear. The Appellant did not allege that the General Division exercised its discretion inappropriately.

CONCLUSION

[10] For these reasons, I am not persuaded that the Appellant has presented a ground of appeal that has a reasonable chance of success on appeal. The Application for Leave to Appeal is therefore 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.