

Citation: *T. M. v. Minister of Employment and Social Development*, 2015 SSTAD 436

Appeal No. AD-15-67

BETWEEN:

**T. M.**

Applicant

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: Hazelyn Ross

DATE OF DECISION: March 27, 2015

## **DECISION**

[1] The Social Security Tribunal (“the Tribunal”), refuses to extend the time for filing an Application for Leave to Appeal and therefore refuses Leave to Appeal.

## **BACKGROUND**

[2] Two applications are before the Tribunal. The first is an application to extend the time for filing an application for leave to appeal; while the second is an application for leave to appeal. On July 4, 2014, the General Division issued a decision in which it denied the Applicant a disability pension under the *Canada Pension Plan* (“CPP”). On February 16, 2015, the Tribunal received an Application requesting Leave to Appeal (“the Application”). Thus, the Tribunal received the Application well outside of the 90 day limit for making such applications.

## **ISSUE**

[3] Two issues are before the Tribunal.

1. Should the Tribunal extend the time for making the Application?
2. Provided that the Tribunal does extend the time for making the Application, does the Appeal have a reasonable chance of success?

### **The Application to Extend Time**

#### **Should the Tribunal Extend the Time for Making the Application?**

#### **The Applicant’s Explanation s**

[4] The General Division heard the appeal on March 4, 2014. It issued its decision on July 4, 2014. The Applicant had until on or about October 4, 2014 to submit the Application. She submitted her request for Leave seven months after the decision was issued.

[5] The Applicant offered several explanations for the late Application. First, she stated that she moved from Halifax to Ottawa in August 2014 and was not under the care of either a family

physician or a psychologist when she received the decision. The Applicant also states she received the decision in October 2014.

[6] By way of further explanation, the Applicant states that her first priority was to ensure she was under the care of a family physician and a mental health professional prior to addressing an Appeal to the Tribunal. She contends that this was a reasonable course of action given her condition and the negative health effects that would accrue to her in the process of filing an appeal. The Applicant also states that she was attempting to obtain legal representation and advice as to how to proceed with the appeal.

### **Discussion**

[7] Much, if not all of the jurisprudence on applications to extend the time for filing an application was decided under the previous CPP ss. 83(1), now repealed. Nonetheless, the Tribunal is guided by the jurisprudence with regards to the factors that have to be considered on an application to extend time. The Tribunal notes that much of the information that *Sheard*<sup>1</sup> states is required in an application to extend time is reproduced in the Tribunal's standard form "Application requesting Leave to Appeal to the Appeal Division." The form requires that an applicant provide his or her name and full mailing address; the name of a representative, if any, and the representatives contact information. The Tribunal's standard form also requires the applicant to state the date he or she received the decision for which leave is being sought; and the grounds of the Application. The additional *Sheard* requirement that the applicant include the date of the decision and the place where the decision was taken are all met by the Tribunal's requirement that an applicant include a copy of the decision he or she is seeking to appeal.

[8] In addition, *Sheard* repeats the factors set out in *Gattellaro*<sup>2</sup> that a Tribunal is required to consider and weigh, namely,

- 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.

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<sup>1</sup> *Sheard v. Canada (Attorney General)*, 2010 FC 458.

<sup>2</sup> *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 833.

[9] The Tribunal finds that taking into consideration the above factors; this is not an appropriate instance in which to extend the time for making the Application. The Tribunal issued its decision on July 4, 2014. Its records show that the decision was sent to the Applicant's then legal representative, however, the Applicant states she did not receive the decision until October 27, 2014. At this point the deadline date for an application for leave to appeal had already passed. Even accepting that the Applicant received the decision late, which the Tribunal does not accept, the Tribunal finds that the Applicant has not provided a satisfactory explanation for why it took her a further three and a half months to file the Application.

[10] The Applicant is a well-educated professional who, the Tribunal finds, could reasonably be expected to appreciate the importance of filing an Application within the time limit or at the earliest opportunity thereafter. The Tribunal does not accept that the Applicant could file an Application only after such time that she was under the care of a family physician or psychologist. Nor does the Tribunal accept that the well-educated Applicant could file the Application only with the assistance of a legal professional. Even if she had difficulty with the Tribunal form her spouse could have helped, as he eventually did.

[11] The Applicant, by her own statements, did not make filing the Application a priority. This is not a case where the Application is a few days or even a few weeks late. It is months late and the Applicant has not provided an explanation for the lateness that the Tribunal finds satisfactory. Accordingly, the Tribunal finds that this is not an appropriate case in which to extend the time for making the Application.

## **CONCLUSION**

[12] The Application to extend the time for making an Application for Leave to Appeal is refused. Accordingly, there is no need to address the Application for Leave to Appeal the General Division decision issued July 4, 2014.

*Hazelyn Ross*

Member, Appeal Division