

Citation: *J. D. v. Minister of Employment and Social Development*, 2015 SSTAD 883

Date: July 16, 2015

File number: AD-15-280

APPEAL DIVISION

Between:

J. D.

Applicant

and

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

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] The Applicant claimed that he was disabled under the *Canada Pension Plan* as a result of injuries suffered in a work accident in 2010. The Respondent denied his application for a *Canada Pension Plan* disability pension initially and after reconsideration. The Applicant appealed to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal of Canada on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing and on February 17, 2015 dismissed the appeal.

[2] The Appellant sought leave to appeal from the General Division decision by letter received by the Social Security Tribunal on May 15, 2015. All of the information necessary to complete the application for leave to appeal was received by the Tribunal on June 22, 2015, which was after the time for filing an application for leave to appeal had expired.

[3] The Applicant contended that he wished to appeal the General Division decision as it was based on “erroneous findings of fact without regard to the facts”. The Respondent filed no submissions. Therefore, I must first decide if the Application was filed late, and if so whether to grant an extension of time to file the application. I must also determine whether leave to appeal should be granted.

ANALYSIS

[4] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. 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). Section 57 of the Act provides that an application seeking leave to appeal must be made within 90 days of the General Division decision being communicated to an applicant.

Late Filing of the Appeal

[5] The General Division decision was dated February 17, 2015, and sent to the Applicant by mail on February 19, 2015. The Tribunal received a letter requesting leave to appeal this decision on May 15, 2015. This letter did not, however, contain all of the information for the appeal to be considered complete. The remaining information was contained in a letter received June 22, 2015. This was after the 90 day time period for filing an application seeking leave to appeal.

[6] The Tribunal has the authority to extend the time for filing of an application for leave to appeal. In *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883 the Federal Court concluded that when considering whether to extend the time for filing of an application for leave to appeal, a decision maker should consider whether the Applicant had a continuing intention to appeal, a reasonable explanation for the delay in applying for leave to appeal, whether the other party would be prejudiced if time were extended, and whether the appellant has presented an arguable case on appeal.

[7] In this case, the completed application seeking leave to appeal was approximately 30 days late. The initial letter was received within the time limit. From this I am satisfied that the Appellant had a continuing intention to appeal, and that no party would be prejudiced by his delay. As there were no submissions made regarding why the appeal was not completed on time, I am unable to make any finding with respect to any explanation for the delay.

[8] The remaining consideration, being whether the Applicant has presented an arguable case on appeal is the same legal test to be met to be granted leave to appeal. It will be considered in that context below.

Reasonable Chance of Success

[9] 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). The Federal Court of Appeal has also found that an arguable case at law is akin to whether legally an applicant has a reasonable chance of success: *Canada*

(Minister of Human Resources Development) v. Hogervorst, 2007 FCA 41, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[10] The Applicant wrote in his letter seeking leave to appeal that the General Division was based on erroneous findings of fact without regard to the facts. He did not explain what erroneous findings were made, or what facts were disregarded. The General Division decision contained a summary of the medical evidence before it, and a procedural history of the claim. The bare allegation of erroneous findings of fact and factual errors is not sufficient to establish an arguable case on appeal. I am unable to determine that any findings of fact were made in a capricious or perverse manner, or without regard to the material before it. Therefore, the Applicant has not presented a ground of appeal that has a reasonable chance of success on appeal under the Act.

CONCLUSION

[11] Based on the facts and arguments presented, I am satisfied that it is in the interests of justice for the time for filing the application seeking leave to appeal to be extended. However, as the Applicant has not presented any ground of appeal that has a reasonable chance of success on appeal, leave to appeal 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.