

**Citation: *J. M. v. Minister of Employment and Social Development*, 2015 SSTAD 927**

**Date: July 27, 2015**

**File number: AD-15-584**

**APPEAL DIVISION**

**Between:**

**J. M.**

**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] On April 27, 2015, the General Division of the Social Security Tribunal of Canada denied the Applicant's request for an extension of time to file an appeal to the General Division. The Applicant filed an application for leave to appeal this decision with the Appeal Division of the Tribunal on July 16, 2015. The Applicant argued that the General Division decision was based on an erroneous finding of fact, and the decision denied her right to be heard, which was a breach of natural justice.

[2] The Respondent filed no submissions on the application for leave to appeal.

### ANALYSIS

[3] 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 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.

[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 (see the Appendix to this decision). Therefore I must determine if the Applicant has presented a ground of appeal that may have a reasonable chance of success on appeal.

[5] The Applicant argued that the General Division decision was based on an erroneous finding of fact contrary to section 58(1)(c) of the *Department of Employment and Social Development Act*. She did not explain what this finding of fact was or how it was made perversely, capriciously or without regard to the material that was before the General Division. Without this I am not persuaded that the General Division made such an erroneous finding of fact. This ground of appeal does not have a reasonable chance of success on appeal.

[6] The Applicant also argued that by denying an extension of time to file the appeal she was denied the right to be heard, which is a principle of natural justice. She confirmed that the General Division decision concluded that she presented an arguable case on appeal, and that there would be no prejudice to the Respondent if an extension of time were granted. She repeated her explanation for delay in filing the appeal - that she was confused by the processes of applying for a provincial disability benefit at the same time as the CPP disability pension, and that she had a reasonable explanation for the delay.

[7] The General Division is the trier of fact. It is to hear the evidence, weigh it and make an impartial decision based on the facts and the law. It is not for the Tribunal when deciding whether to grant leave to appeal to reweigh the evidence to reach a different conclusion (see *Simpson v. Canada (Attorney General)*, 2012 FCA 82).

[8] A decision maker is also required to give adequate reasons for the decision made. The reasons should allow the parties to understand the decision and why it was made. In this case, the General Division decision stated that its findings that the Applicant failed to demonstrate a continuing intention to pursue her appeal and that she did not have a reasonable explanation for her delay were more persuasive than those pertaining to an arguable case and prejudice to the Respondent. The decision contained no explanation for why it reached this conclusion. The parties may not have been unable to understand the reason for this decision. This may be a breach of natural justice. The decision also did not explain why it was in the interests of justice for the extension not to be granted. Hence, I am satisfied that this ground of appeal may have a reasonable chance of success on appeal.

## **CONCLUSION**

[9] The Application is granted because the Applicant has presented a ground of appeal that may have a reasonable chance of success on appeal.

[10] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker  
Member, Appeal Division