

Citation: *L. L. v. Minister of Employment and Social Development*, 2015 SSTAD 1277

Date: November 2, 2015

File number: AD-15-383

APPEAL DIVISION

Between:

L. L.

Applicant

and

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

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

DECISION

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

INTRODUCTION

[2] On March 16, 2015 the General Division issued a decision in which it denied the Applicant's application to extend the time for filing an appeal with the Social Security Tribunal of Canada, (the Tribunal). The Applicant seeks leave to appeal, (the Application), the decision.

THE LAW

[3] The *Department of Employment and Social Development Act*, (DESD Act), provides for appeals to the General Division of the Tribunal.

52. Appeal - time limit – (1) An appeal of a decision (of the Minister) must be brought to the General Division in the prescribed form and manner and within,
(a) in the case of a decision made under the *Employment Insurance Act*, 30 days after the day on which it is communicated to the appellant; and
(b) in any other the case, 90 days after the day on which it is communicated to the appellant

[4] The DESD also provides at ss. 52(2) that the General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the day on which the decision is communicated to the appellant

[5] The Social Security Tribunal Regulations¹ set out when a decision or document is deemed to have been communicated to an appellant.

19. When decision deemed communicated – (1) A decision made under subsection 52(1), 54(1) 58(3), 59(1) or 66(1) of the Act is deemed to have been communicated to a party,

- (a) if sent by ordinary mail, 10 days after the day on which it is mailed to the party;
- (b) if sent by registered mail or courier, on
 - (i) The date recorded on the acknowledgement of receipt, or
 - (ii) the date it is delivered to the last known address of the party; and

¹ *Social Security Tribunal Regulations, S.O.R./2013-60 as amended by S.C.2013, c. 40, s. 236.*

(c) if sent by facsimile, email or other electronic means. the next business day after the day on which it is transmitted.

(2) Other documents sent by Tribunal – Subsection (1) also applies to any other document sent by the Tribunal to a party.

[6] These deemed communication provisions apply to appeals to the General Division; General Division decisions; decisions of the Appeal Division on leave applications; Appeal Division decisions on appeals from the General Division; and CPP decisions with respect to benefit repayments.

HISTORY OF THESE PROCEEDINGS

[7] Documents on file indicate that on May 15, 2013 the Respondent received an application for a Canada Pension Plan disability pension from the Applicant. (GD 1-1) The Respondent denied the application and the Applicant asked that the Respondent to reconsider its decision. On February 14, 2014, the Respondent issued its reconsideration decision. The Respondent maintained the denial. Subsequently, the Applicant filed an appeal with the General Division of the Tribunal. (GD1A-3).

[8] It appears that the Tribunal received the Appeal on or about August 12, 2014 (General Division decision at para. 2). This was some 80 days after the time limit for filing the appeal. In due course, the General Division issued its decision denying the Applicant time to extend the time for filing the appeal. The General Division applied the four-part test for granting such extensions set out in *Gattellaro*.² The Member found that while the Applicant was able to meet two aspects of the test; she failed to meet the other two, namely, the Applicant had failed to demonstrate a continuing intention to appeal; and had also failed to provide a satisfactory explanation for her delay in filing the appeal.

GROUND OF THE APPLICATION

[9] Counsel for the Applicant submitted that, contrary to the conclusion of the General Division, the Applicant did maintain a continuing intention to appeal. Counsel also submitted

² *Canada (Minister of Human Resources Development) v. Gattellaro* 2006 FCA

that the Applicant had a reasonable explanation for the delay. In addition, Counsel argued that the Applicant would suffer prejudice if she was not allowed to proceed with the appeal. For the reasons set out below, the Tribunal grants leave to appeal the General Division decision denying the Applicant's application to extend time for filing the appeal.

Should the Tribunal extend the Time for Filing the Appeal?

[10] This Application turns on what occurred between the time the Respondent issued its reconsideration decision and the time the Applicant is said to have filed her appeal with the General Division.

[11] The Applicant submitted she sent a letter to the Review Tribunal indicating that she intended to appeal the reconsideration decision. The Tribunal finds the Applicant credible in this regard. A letter dated May 9, 2014 from Human Resources Development Canada, (HRSDC), addressed to the Applicant supports her statement. (GD1-1) The letter states, in part, "this letter is further to the letter we received on May 9, 2014 requesting an appeal to the Social Security Tribunal for your application dated May 15, 2013 for Canada Pension Plan (CPP) disability benefits. We are returning your letter of appeal as you are required to send your request directly to the Social Security Tribunal."

[12] According to the letter from HRSDC, the Applicant made an attempt to appeal the decision on May 9, 2014. As the reconsideration decision from which she was attempting to appeal was issued on February 14, 2014, when she sent the letter to HRSDC the Applicant was within the 90 day time limit set out by the DESD subsection 52(b). The General Division did not refer to this letter in its decision, asserting at paragraph 9 that there was no evidence that the Applicant had made any attempt to file an appeal with HRSDC:

[9] "In the Appellant's letter of October 7, 2014 she refers to materials provided to Service Canada in May 2014 pertaining to this appeal. Those materials are not before the Tribunal and therefore cannot be considered in determining a continuing intention to appeal."

[13] The problem is that the materials were, in fact, before the Tribunal. The HRSDC letter is date stamped as having been received by the Tribunal on August 12, 2014. Thus, the General Division's assertion is an error, which, given the likely probative value of the letters in establishing a continuing intention to appeal, is a material one.

[14] Furthermore, in submissions to the Tribunal, the Respondent has conceded that the Applicant has a reasonable chance of success on the Application and has taken the position that the Tribunal should grant the Application. (AD2) Therefore, taking all the circumstances of the case, as well as the interests of justice, into consideration, the Tribunal finds that it is appropriate to allow the Application.

CONCLUSION

[15] Leave to appeal the General Division decision to refuse to extend the time for filing the appeal is granted.

Hazelyn Ross
Member, Appeal Division