Citation: ***B. W. v. Minister of Employment and Social Development,*** **2015 SSTAD 1372**

Date: November 30, 2015

File number: AD-15-1117

APPEAL DIVISION

Between:

B. W.

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 applied for and began to receive a *Canada Pension Plan* retirement pension in December 2010. He subsequently applied to have this replaced with a *Canada Pension Plan* disability pension, and claimed that he was disabled by a serious stroke that occurred in December 2010. The Respondent denied his application to replace the retirement pension with a disability pension initially and after reconsideration. The Applicant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing by written questions and answers and on December 29, 2014 dismissed the appeal.

[2] On October 9, 2015 the Applicant requested an extension of time to file an application requesting leave to appeal and requested leave to appeal the General Division decision. The *Department of Employment and Social Development Act*, which governs the operation of the Tribunal, provides that an application for leave to appeal must be made within 90 days of when the decision was communicated to the party. This time may be extended, but in no case may an application for leave to appeal be made more than one year after the date the decision was communicated to the party.

[3] The Applicant filed the request for an extension of time to appeal the General Division decision approximately nine months after the date of the General Division decision, which was more than 90 days after the date that the decision was communicated to him. Therefore I must decide if an extension of time to make the application should be granted.

[4] The Tribunal requested that the parties file written submissions on the issue of whether an extension of time to file the application should be granted and whether the Applicant had presented an arguable case on appeal. The Respondent filed written submissions; the Applicant did not. I considered the Applicant's application for leave to appeal which included the request for an extension of time and the Respondent's submissions in making this decision.

ANALYSIS

[5] In *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883, the Federal Court stated that the following factors should be considered when deciding whether to grant an extension of time to file an application for leave to appeal:

a) The Appellant must demonstrate a continuing intention to pursue the appeal;

b) The matter discloses an arguable case;

c) There is a reasonable explanation for the delay; and

d) There is no prejudice to the other party in allowing the extension.

[6] The weight to be given to each of these factors may differ in each case, and in some cases, different factors will be relevant. The overriding consideration is that the interests of justice be served – *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

[7] In this case, the Applicant explained that the application requesting leave to appeal was filed late because no time limit to do so was set out in the decision, and he was not aware of the time limit. I am not persuaded that this is a reasonable explanation. The Tribunal is not obliged to set out what avenues of appeal or judicial review a party may pursue if he is unhappy with the General Division decision. The Applicant is presumed to know the law. He was represented. The time limit to file an application for leave to appeal is clearly set out in the *Department of Employment and Social Development Act*.

[8] The Applicant also provided no information upon which I could conclude that he had a continuing intention to appeal the General Division decision.

[9] The Respondent, in its written submissions, conceded that it would suffer no prejudice if this matter were to proceed.

[10] Whether the Applicant demonstrated that he had an arguable case on appeal must be considered in deciding whether to grant an extension of time to file the application, and the *Department of Employment and Social Development Act* requires that a claimant present an

arguable case on appeal (which has been found to be the same in law as a reasonable chance of success), based on the grounds of appeal set out in section 58 of the Act, in order to be granted leave to appeal.

[11] In this case, the Applicant did not present an arguable case on appeal. He contended first, that written questions and answers was not an appropriate manner in which to conduct the hearing. However, section 21 of the *Social Security Tribunal Regulations* provides that a hearing may be conducted by written questions and answers, teleconference, videoconference or other means of telecommunication, or by personal appearance. The General Division decision set out that this matter was originally to be heard by teleconference, but in consultation with the Applicant's representative and after considering the Applicant's medical condition, it was agreed that the matter would be heard by written questions and answers. I agree with the Respondent's submission that it is now almost outrageous for the Applicant to object to proceeding in a way that he agreed to. He did not object to proceeding in this way at the time of the hearing. In addition, the Applicant did not contend that the General Division Member improperly exercised her discretion in deciding what form the hearing would take. Therefore, this is not a ground of appeal that presents an arguable case on appeal.

[12] The Applicant further argued that the General Division did not consider all of the medical evidence, and that it failed to consider the synergistic effects of multiple health conditions on him. The Applicant did not, however, provide any detail regarding what medical information was not considered, or how the synergistic effects of his conditions was not considered. Without this, I am not persuaded that these arguments present an arguable case on appeal.

[13] The General Division made no error in law in reaching its decision. The decision summarized and considered the evidence before it, and applied the relevant law to the facts. The decision is reasoned and logical. It is defensible on the law and the facts.

[14] For these reasons, I am not satisfied that it would be in the interests of justice to extend the time for the Applicant to file an application for leave to appeal. No purpose is served by extending the time to file an application if the appeal has no reasonable chance of success on its merits. The Applicant also did not satisfy me that the other considerations set out in *Gattellaro* were met.

[15] An extension of time to apply for leave to appeal is therefore refused.

Valerie Hazlett Parker
Member, Appeal Division