

Citation: *N. M. v. Minister of Employment and Social Development*, 2015 SSTAD 1399

Date: December 7, 2015

File number: AD-15-1099

APPEAL DIVISION

Between:

N. M.

Applicant

and

Minister of Employment and Social Development

Respondent

Leave to Appeal

Decision by: Hazelyn Ross, Member, Appeal Division

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada, (the Tribunal), is refused.

INTRODUCTION

[2] The Applicant applied for a *Canada Pension Plan* (CPP) disability pension. The Respondent denied her application both initially and upon reconsideration. The reconsideration decision was dated January 23, 2014. (GD2-13-14) On April 28, 2015, Counsel for the Applicant wrote to the Tribunal asking the Tribunal to “start an appeal process in this matter.”

[3] It must be noted that at no time did the Applicant file a notice of appeal that conformed to the *Social Security Tribunal Regulations*. However, this failure was not determinative of the General Division decision nor is it determinative of the current Application.

[4] On September 22, 2015, a Member of the General Division of the Tribunal issued a decision in which he held that,

- a. No appeal had been filed with the Tribunal after the 90-day limit,
- b. In accordance with paragraph 52(1)(b) of the DESD Act [*Department of Employment and Social Development Act*], the Appellant had until April 27, 2014 to file an appeal;
- c. In accordance with paragraph 52(1)(b) of the DESD Act in no case can the Tribunal permit an appeal be brought more than one year after the day on which the decision is communicated to the Appellant.

GROUND OF THE APPLICATION

[5] On October 7, 2015, Counsel for the Applicant filed a document asking the Tribunal to grant the Applicant an extension of time to file a notice of appeal in this matter. (AD1-1-2) Counsel for the Applicant argues the factors set out in *Canada (Minister of Human Resources*

Development) v. Gattellaro, 2005 FC 883. In Counsel’s submission there is ample reason for the Appeal Division to allow the extension of time.

[6] The Appeal Division infers that Counsel is really asking for leave to appeal the General Division decision.

ISSUE

[7] The Appeal Division must decide if the appeal has a reasonable chance of success.

APPLICABLE LAW

[8] Leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division.¹ To grant leave, the Appeal Division must be satisfied that the appeal would have a reasonable chance of success². In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 as well as in *Fancy v. Canada (Attorney General)*, 2010 FCA 63, the Federal Court of Appeal equated a reasonable chance of success to an arguable case. In *Canada (Attorney General) v. Carroll*³ the Federal Court opined that, “an Applicant will raise an arguable case if she [or he] ... raises an issue not considered ... or can point to an error” in the decision.

[9] There are only three grounds on which an appellant may bring an appeal. These grounds are set out in section 58 of the *Department of Employment and Social Development Act*, namely, breaches of natural justice; error of law; or error of fact.⁴ However, to grant leave, the Appeal Division must be satisfied that the appeal would have a reasonable chance of

¹ Subsections 56(1) and 58(3) govern the grant of leave to appeal, providing that “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal.”

² The DESD Act, subsection 58(2) sets out the criteria on which leave to appeal is granted, namely, “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

³ *Canada (Attorney General) v. Carroll*, 2011FC1092 para 14.

⁴ **58(1) Grounds of Appeal –**

- a. The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

success. This means that the Appeal Division must first find that, were the matter to proceed to a hearing, at least one of the grounds of the Application relates to a ground of appeal and that there is a reasonable chance that the appeal would succeed on this ground.

[10] For the reasons set out below the Appeal Division finds that the Applicant has not raised an arguable case.

ANALYSIS

[11] The DESD Act sets out time limits within which an appeal may be brought to the Tribunal. In the case of appeals to the General Division, those time limits are set out at section 52 of the DESD Act.

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*, 30days after the day on which it is communicated to the appellant;
and
- (b) in any other the case, 90days after the day on which it is communicated to the appellant

[12] Subsection 52(2) provides 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.

[13] The trouble with the present Application is that, as the General Division Member found, the Applicant did not file a complete appeal with the Tribunal within the time frame for filing an appeal of an Income Security decision. Furthermore, the Tribunal received the letter of April 28, 2015 more than one year after the reconsideration decision was communicated to the Applicant.

[14] The General Division correctly found that paragraph 52(1)(b) of the DESD Act was engaged. The mandatory language of the subsection leaves no doubt that the General Division

had no jurisdiction to proceed on this matter. Quite simply, the Applicant was too far out of time by the time the Tribunal received the letter of April 28, 2015.

[15] Consequently, the Appeal Division finds that no error of any kind is disclosed by the decision of the General Division. Thus, the Appeal Division is not satisfied that the appeal would have a reasonable chance of success. Leave to appeal cannot be granted in this case.

CONCLUSION

[16] The Application is refused.

Hazelyn Ross
Member, Appeal Division