Citation: ***A. C. v. Minister of Employment and Social Development,*** **2015 SSTAD 1393**

Date: December 3, 2015

File number: AD-15-1123

APPEAL DIVISION

Between:

A. C.

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 October 16, 2013. (GD2-45) On May 1, 2015, the Tribunal received a copy of a notice of appeal that had been filed by the Applicant. (GD2-1) On September 24, 2015, a Member of the General Division of the Tribunal issued a decision dismissing the appeal as having been filed more than one year after the date the decision was communicated to the Applicant.

GROUNDS OF THE APPLICATION

[3] Counsel for the Applicant cites all of the grounds under section 58 of *Department of Employment and Social Development Act*, (the DESD Act). He cited the Applicant's mental state as the reason the notice of appeal was filed late.

ISSUE

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

APPLICABLE LAW

[5] 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 success[2]. In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 as well as in *Fancy v. Canada (Attorney*

[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."

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.

[6] 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*, (DESD 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 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.

ANALYSIS

[7] 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, 90 days after the day on which it is communicated to the appellant

[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.

[8] 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. It is this latter subsection that gave rise to the General Division decision.

[9] The date on which the Review Tribunal decision was communicated to the Applicant and the date on which she filed the notice of appeal are not in dispute. Neither is it in dispute that the notice to appeal was filed late. In fact, when the Applicant filed the notice of appeal it was filed more than 18 months after the date on which the Review Tribunal decision had been communicated to her. This meant that the filing was caught by the operation of subsection 52**(**2) of the DESD Act. This section is written in mandatory language. There is no room for the exercise of discretion. Thus, the General Division was obliged to invoke subsection 52(2) of the DESD Act and to find that the appeal could not proceed. Put simply, by virtue of the statutory provision, the General Division lacked the requisite jurisdiction to hear the appeal.

[10] 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

[11] The Application is refused.

Hazelyn Ross
Member, Appeal Division