

Citation: *R. M. v. Minister of Employment and Social Development*, 2015 SSTAD 1457

Appeal No. AD-15-1175

BETWEEN:

R. M.

Applicant

and

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

Respondent

**SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision**

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: December 21, 2015

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated July 27, 2015. The General Division proceeded on the record. The General Division determined that the Applicant had abandoned his appeal before it, on the basis that he had failed to provide updated contact information to the Social Security Tribunal and as there had been no response to correspondence dated June 4, 2015 and July 3, 2015 from the Social Security Tribunal. The Applicant filed an Application Requesting Leave to Appeal to the Appeal Division on October 27, 2015. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

ISSUE

[2] Does the appeal have a reasonable chance of success?

SUBMISSIONS

[3] The Applicant denies that he has ever abandoned his appeal and submits that he had in fact responded to any requests for information from the Social Security Tribunal. He also submits that he has always corresponded with the Social Security Tribunal but that it has consistently lost his correspondence. He relies on a letter dated September 30, 2015 from Social Security Tribunal, which states that there was an administrative delay involved in providing his correspondence dated June 22, 2015 to the General Division, before it issued a decision on the appeal. Essentially the Applicant says that the General Division failed to observe a principle of natural justice.

[4] The Respondent has not filed any written submissions.

ANALYSIS

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* sets out the grounds of appeal as being limited to the following:

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

[6] I need to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that the appeal has a reasonable chance of success, before leave can be granted. The Federal Court of Canada recently affirmed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[7] This appeal has a lengthy history, but an exhaustive review of the history of proceedings is unnecessary. The General Division determined that the Applicant had abandoned his appeal on the basis that he had not responded to the correspondence of June 4, 2015 and July 3, 2015 from the Social Security Tribunal requesting that he provide updated contact information. The Social Security Tribunal sent both letters by ordinary mail and by e-mail transmission.

[8] The letter dated June 4, 2015 requested the Applicant provide a telephone number at which the Applicant could be contacted for a teleconference hearing, by June 26, 2015.

[9] The letter dated June 4, 2015 was apparently returned undeliverable by ordinary mail. It may have been undeliverable as the recipient's address was incomplete.

[10] The Social Security Tribunal sent another letter to the Applicant on July 3, 2015, with the recipient's complete address. The Social Security Tribunal advised the Applicant that unless it received a response to its June 4, 2015 correspondence by July 17, 2015 (i.e. that he provide a telephone number), the Social Security Tribunal would proceed on the basis that he no longer wished to pursue the appeal and it would be considered to have been abandoned.

[11] It is unclear if and when the Applicant might have received the letter of July 3, 2015 from the Social Security Tribunal by ordinary mail, as he resides overseas in Australia, and it would be reasonable to expect that anything sent by ordinary mail to an overseas mailing address would take somewhat longer than if it were sent to a domestic address.

[12] On July 9, 2015, the Applicant filed a Hearing Information Form, along with submissions and a document titled “Australian Government Tax Agent Portal” (document GD71 to GD7-6). The Applicant did not rule out any forms of hearing in which he would be unable to participate, nor did he specify any preferred days of the week for a hearing. The Applicant dated the form May 25, 2015.

[13] It does not appear that the Hearing Information Form and submissions were filed in response to the letters of June 4, 2015 or July 3, 2015, but the Applicant’s submissions start with the sentence, “Got your documents”. The letter reads in part:

I don’t have a phone. So you can’t call me. Told you that four years ago when I first applied. By the way Big Brother is listening and saving every word. Just because you are paranoid, does (*sic*) mean they are not after you? I have not talked on the phone for years.

...

You need me to be on the telephone for 2 ½ hours. I do not hear anymore. So unless you are in front of me I would not understand your call anyways. I get confused. Disorientate and easily distracted not being able to hear or see well.

[14] I note that there is other correspondence from the Applicant in which he advises that he does not own a facsimile or have a telephone number. In an e-mail sent by him to the Social Security Tribunal on December 8, 2014, he also advised that he has a shared mail box and that while he has an e-mail address, he has limited access to a computer.

[15] The Social Security Tribunal sent another letter to the Applicant on July 27, 2015, advising that the General Division Member intended to make a decision on the basis of the documents and submissions filed. The letter indicated that if the parties had any additional documents or submissions to file, they were to be received by the Social Security Tribunal

by no later than August 28, 2015, and any documents in response were to be filed by no later than September 28, 2015. The letter also indicated that any documents filed late would be considered only at the discretion of the General Division. Again, the recipient's address on the letter was incomplete, as it was missing country information and area code.

[16] Before the parties had any opportunity to respond and provide any additional documents or submissions to the letter of July 27, 2015, the General Division issued its decision on July 27, 2015.

[17] The Applicant wrote to the Social Security Tribunal by letters dated September 7, 2015 and November 1, 2015 (AD1B). In his letter dated September 7, 2015, the Applicant indicated that he had just received the letter dated July 27, 2015 from the Social Security Tribunal that day. He indicates that he had responded to previous letters from the Social Security Tribunal by registered mail and had enclosed a detailed explanation of why he would and could not make or receive an international phone call. He confirmed that he did not wish to abandon his appeal and that he had never abandoned it at any time. He confirmed that he does not own a facsimile or have a telephone number. He shares a post office box and uses the library computer to receive or send any e-mails.

[18] On September 30, 2015, the Social Security Tribunal wrote to the Applicant. The letter reads in part:

The Tribunal received your correspondence dated June 22, 2015 on July 8 (*sic*¹), 2015. Unfortunately, due to administrative delays, your correspondence was not provided to the Tribunal Member before the decision was issued on July 27, 2015. This means that the Tribunal Member did not consider the correspondence when making the decision.

[19] The General Division Member did not refer to the Hearing Information Form or to the accompanying submissions in its decision.

[20] The Applicant's correspondence dated June 22, 2015 (received by the Social Security Tribunal on July 9, 2015) could have had an impact on the decision, but the

¹ The correspondence dated June 22, 2015 is actually date-stamped received July 9, 2015 by the Social Security Tribunal.

General Division Member did not have a copy of it, prior to issuing his decision on July 27, 2015. Yet, the letter dated June 22, 2015 was received by the Social Security Tribunal, before the General Division's own deadline of July 17, 2015 had passed. This correspondence should have been promptly delivered to the General Division, as it was received on time. Its exclusion from the evidence, given all of the circumstances, may well bring the administration of justice into disrepute.

[21] The Applicant's correspondence dated June 22, 2015 may have been vital to the General Division's determination as to how to proceed. Although the Applicant's June 22, 2015 correspondence may not have been in direct response to the letters of June 4, 2015 and July 3, 2015, certainly it could have been seen by the General Division as an indication that the Applicant indeed intended to continue to pursue his appeal. Certainly it could have been seen as compelling that the Applicant had no intention of abandoning the appeal at that juncture. Had the General Division had the Applicant's correspondence of June 22, 2015, it may have arrived at a different conclusion than it did.

[22] Given the history of proceedings and the considerations above, I am satisfied that the appeal has a reasonable chance of success that the General Division may have erred in determining that the Applicant had abandoned the appeal.

CONCLUSION

[23] The application for leave to appeal is granted.

[24] This decision granting leave in no way presumes the result of the appeal on the merits of the case.

Janet Lew

Member, Appeal Division