



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. W. v. Minister of Employment and Social Development*, 2016 SSTADIS 47

Tribunal File Number: AD-15-1296

BETWEEN:

J. W.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

HEARD ON:

DATE OF DECISION: January 22, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Applicant applied for a *Canada Pension Plan* disability pension after he began to receive a *Canada Pension Plan* retirement pension. He claimed that he was disabled because of a cancer diagnosis and other physical conditions. The Respondent denied his disability pension claim initially and upon 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 videoconference hearing and on August 12, 2015 dismissed the appeal.

[2] On December 12, 2015 the Applicant requested leave to appeal the General Division decision to the Appeal Division of the Tribunal. This appeared to be after the time to do so had expired. The Applicant argued that leave to appeal should be granted because he provided further medical evidence to support his claim after the hearing and that he felt that he was discriminated against because he worked for as long as possible despite pain and discomfort.

[3] On December 21, 2015 the Tribunal wrote to both parties and requested that they file submissions addressing the legal requirements for an extension of time to file an appeal and the only grounds of appeal that can be considered under section 58 of the Act. The Applicant did not respond to this. The Respondent filed no submissions.

ANALYSIS

[4] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has also found that an arguable case at law is akin to whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[5] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Section 57 of the Act states that a request for leave to appeal to the Appeal Division must be filed with the Tribunal within 90 days of the decision being communicated to the Applicant. This time can be extended, but not for more than one year from the date that the decision was communicated to the Applicant. Section 58 of the Act sets out the only grounds of appeal that can be considered to grant leave to appeal a decision of the General Division (see the Appendix to this decision). I must therefore decide if the time to file the application for leave to appeal should be extended, and if so whether the Applicant has presented a ground of appeal that falls within section 58 of the Act that may have a reasonable chance of success on appeal.

[6] First, it appears that the application for leave to appeal was filed with the Tribunal within approximately 30 days of the time to do so expiring. The Applicant explained that he was under the impression that the decision was final and could not be appealed until he spoke with a lawyer. I accept that this is a reasonable explanation for the delay and that this demonstrated that the Applicant had a continuing intention to appeal the decision. I am satisfied that it is in the interests of justice to extend the time for this application for leave to appeal to be filed.

[7] Regarding whether leave to appeal should be granted, the Applicant argued that after the General Division hearing he provided additional evidence to support his claim, and that this evidence indicated that he suffered from the claimed disabilities prior to January 2011, the date by which he had to have been found to be disabled to be entitled to receive the disability pension. The Federal Court of Appeal has clearly stated that the presentation of new evidence is not a ground of appeal under the Act (*Tracey v. Canada (Attorney General)*, 2015 FCA 1300). Leave to appeal therefore cannot be granted on the basis of the presentation of this additional medical evidence.

[8] The Applicant also contended that he felt that he was discriminated against because he continued to work for as long as possible despite pain and discomfort. The Applicant did not provide any explanation of how he was to have been discriminated against or the legal basis

for this claim. Without this I am not satisfied that this argument is a ground of appeal under the Act.

CONCLUSION

[9] The time to file the application is extended for the reasons set out above.

[10] I am sympathetic to the Applicant's situation. The application for leave to appeal is refused, however, as the Applicant did not present a ground of appeal under the Act that may have a reasonable chance of success on appeal.

Valerie Hazlett Parker
Member, Appeal Division

APPENDIX

Department of Employment and Social Development Act

57 (1) An application for leave to appeal must be made to the Appeal Division in the prescribed form and manner and within,

- (a) in the case of a decision made by the Employment Insurance Section, 30 days after the day on which it is communicated to the appellant; and
- (b) in the case of a decision made by the Income Security Section, 90 days after the day on which the decision is communicated to the appellant.

58. (1) The only grounds of appeal are that

- (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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.