



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

**Citation:** *L. L. v. Minister of Employment and Social Development*, 2016 SSTADIS 54

**Date:** January 26, 2016

**File number:** AD-15-383

**APPEAL DIVISION**

**Between:**

**L. L.**

**Appellant**

**and**

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

**Respondent**

**Decision by:** Hazelyn Ross, Member, Appeal Division

## **DECISION**

[1] The Appeal Division of the Social Security Tribunal of Canada allows the appeal.

## **INTRODUCTION**

[2] On November 2, 2015, the Appeal Division granted the Appellant leave to appeal from a decision of the General Division issued March 16, 2015. In its decision the General Division denied the Applicant's application to extend the time for filing an appeal with the Social Security Tribunal of Canada, (the Tribunal).

[3] Leave to Appeal was granted on the basis that while the General Division had found that the Appellant had failed to demonstrate a continuing intention to appeal, and had also failed to provide a satisfactory explanation for her delay in filing the appeal, there was evidence in the Tribunal file that supported the Appellant's position that she had always had a continuing intention to pursue her appeal.

## **ISSUE**

[4] The Appeal Division must decide whether it should allow the appeal. In the event that the Appeal Division allows the appeal, per section 59 of the *Department of Employment and Social Development Act*, (DESD Act), it must also decide the proper disposition of the appeal.

## **THE LAW**

[5] Once leave to appeal has been granted, the Appeal Division is empowered, pursuant to section 59 of the DESD Act to make any of a number of dispositions set out in the section, namely:

**52. Decision – (1)** The Appeal Division may dismiss the appeal, give the decision the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

## **SUBMISSIONS**

[6] In keeping with section 42 of the *Social Security Tribunal Regulations* the parties were allowed 45 days in which to make submissions on the issues raised in the Application for leave to appeal. The Appeal Division received submissions only from the Respondent. In his submission, Counsel for the Respondent took the position that the Appeal Division should allow the appeal and should remit the matter back to the General Division with directions that the General Division allow the extension of time and hold a hearing *de novo*.

## **ANALYSIS**

[7] On considering the circumstances of the case, the Appeal Division finds that it is appropriate to allow the appeal. The Appeal Division reaches this conclusion because it finds that in concluding that the Appellant had not demonstrated a continuing intention to pursue her appeal, the General Division had committed an error of fact.

[8] The General Division had concluded that there was no evidence that the Appellant had a continuing intention to pursue the appeal. The Respondent issued its reconsideration decision on February 14, 2014. The Appeal Division finds that there is credible evidence on file that on May 9, 2014 the Appellant did submit a letter to the Office of the Commissioner of Review Tribunals in which she indicated her intention to appeal the reconsideration decision. At this time the Appellant was within the time limit for filing her appeal.

[9] The Appeal Division also finds that there is credible evidence on file that the letter was returned to the Appellant with a direction that she makes the application directly to the Tribunal, which the Appellant then did. The Tribunal received her appeal on or about August 12, 2014. Had this been the Appellant's first attempt to file an appeal she would without doubt have been filing well outside of the time limit for filing the appeal and thus the General Division decision may well have been the appropriate one. However, the Appeal Division finds that these circumstances do not support the General Division decision, as they can be interpreted as being indicative of the Applicant's continuing intention to pursue the appeal. Consequent upon this finding there is also like no question of a delay in filing the appeal.

[10] Accordingly, the Appeal Division allows the appeal.

### **What is the Appropriate Decision under Section 59 of the DESD Act?**

[11] Counsel for the Respondent submitted that the Appeal Division should allow the appeal and exercising the power granted to it under section 59 of the DESD Act remit the matter back to the General Division with the directions already alluded to.

[12] For the following reasons, the Appeal Division is persuaded that this is the appropriate disposition of this appeal. First, there has not been a determination of the substantive issues of the case; therefore, the Appeal Division would be handicapped in arriving at a decision on the merits as it would not have the benefit of the arguments that had been made to the General Division. Second, in order to determine the appeal the General Division would, necessarily, have to allow the application for an extension of time to file the appeal and also to hold a *de novo* hearing. Thus, it is appropriate that the Appeal Division exercise the jurisdiction granted in s. 59 of the DESD Act to remit the matter back to the General Division with directions that it allow the extension of time and hold a hearing *de novo*.

### **DECISION**

[13] The Appeal Division exercises its jurisdiction under s. 59 of the DESD Act to refer the matter back to the General Division for reconsideration in accordance with the following directions:

- a. To allow the extension of time to file the appeal; and
- b. To hold a hearing *de novo* on the merits of the appeal.

*Hazelyn Ross*  
Member, Appeal Division