Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *M. G. v. Minister of Employment and Social Development*, 2016 SSTGDIS 40

Tribunal File Number: GP-16-1050

BETWEEN:

M. G.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

DECISION BY: Jude Samson

DATE OF DECISION: May 30, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Appellant claims to be disabled because of a lower back injury, and on June 19, 2013, she applied for a *Canada Pension Plan* (CPP) disability pension. Her application was denied by the Respondent at the initial and reconsideration levels. It is the reconsideration decision dated July 23, 2014, that the Appellant now seeks to appeal before the Tribunal (GD2-4).

[2] When bringing her appeal to the Tribunal's General Division, however, the Appellant failed to meet the 90-day time limit that is prescribed by s. 52(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

ISSUE

[3] Pursuant to subsection 52(2) of the DESD Act, should the Appellant be given an extension of time to pursue her appeal?

FACTS AND ANALYSIS

[4] In the Notice of Appeal, the Appellant confirmed that she received the reconsideration decision on July 29, 2014 (GD1-4). Accordingly, she had until October 27, 2014, to launch her appeal. The Appellant's Representative claims that a Notice of Appeal was sent to the Tribunal on August 6, 2014; however, the Tribunal has no record of receiving it.

[5] Though it is part of the Tribunal's normal procedures to send a letter to the parties acknowledging receipt of nearly every document that is added to an appeal file, neither the Appellant nor her Representative followed-up with the Tribunal regarding the August 2014 documents until March 16, 2016, when the Appellant's representative contacted the Tribunal by phone and then by email (GD1-1). Attached to the email was a copy of the correspondence (and its attachments) that the Appellant's Representative allegedly sent to the Tribunal on August 6, 2014, though there was no evidence of that letter having been sent or received. No explanation

has been given as to why the Appellant's Representative waited so long to follow-up with the Tribunal.

[6] In a phone call of March 22, 2016, and by letter dated May 10, 2016 (GD3), the Tribunal asked the Appellant's Representative to provide proof that the original documents were sent or received in 2014. The Appellant's Representative responded on May 18, 2016, asserting again that the materials had been sent to the Tribunal on August 6, 2014, and attaching another copy of those materials (GD4). However, no additional evidence, such as a receipt or delivery confirmation from Canada Post, was filed to show that the documents were sent and/or received in 2014.

[7] Accordingly, the Tribunal finds that the Notice of Appeal was filed on March 16, 2016, some 18 ½ months after the reconsideration decision was communicated to the Appellant (GD1).

[8] As alluded to above, subsection 52(2) of the DESD Act is the provision that authorizes the Tribunal to grant extensions of time. Unfortunately, however, it states that extensions of time cannot be granted when the appeal is brought to the General Division of the Tribunal more than one year after the day on which the reconsideration decision was communicated to the Appellant.

[9] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the CPP and the DESD Act. The Tribunal cannot use the principles of equity or consider extenuating circumstances to grant extensions of time.

[10] Given the Tribunal's finding that the Notice of Appeal was received some 18 ½ months after the reconsideration decision was communicated to the Appellant, the Tribunal has no discretion to extend the time for the Appellant to bring her appeal.

[11] In reaching its conclusion, the Tribunal has drawn on the Federal Court's decision in *Canada (A.G.) v. Vinet-Proulx*, 2007 FC 99. In *Vinet-Proulx*, Justice Martineau found that the obligation was on Ms. Vinet-Proulx to make an application for benefits to the relevant government department. As such, Ms. Vinet-Proulx could not obtain further retroactivity of her

benefits based on an application that was inexplicably lost, even though there was good evidence that the application had been sent by mail.

[12] This case is similar in that it was the appellant's obligation to bring her appeal to the Tribunal in the manner set out in s. 52(1) of the DESD Act. Though there is some evidence of the appeal documents being sent, there is no evidence that they were ever received by the Tribunal and neither the Appellant nor her Representative followed-up until well after the 90-day and one-year time limits in the DESD Act had expired. Like in *Vinet-Proulx*, the Tribunal finds that it cannot rely on the earlier documents when assessing this request for an extension of time, even though it appears that those documents were inexplicably lost.

CONCLUSION

[13] This appeal was not brought within the one-year time limit set out in subsection 52(2) of the DESD Act. Regrettably, therefore, the Tribunal has no power to grant the extension of time and the appeal cannot proceed.

Jude Samson
Member, General Division - Income Security