



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *P. C. v. Minister of Employment and Social Development*, 2016 SSTADIS 242

Tribunal File Number: AD-16-145

BETWEEN:

**P. C.**

Applicant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Hazelyn Ross

DATE OF DECISION: June 29, 2016

## **REASONS AND DECISION**

[1] The Appeal Division of the Social Security Tribunal of Canada, (the Tribunal), refuses to extend the time for filing the request for leave to appeal.

[2] The Appeal Division refuses leave to appeal.

## **INTRODUCTION**

[3] The Applicant applied for a disability pension pursuant to paragraph 42(2)(a) of the *Canada Pension Plan, (CPP)*. The Respondent denied his application and maintained the denial on reconsideration. The Applicant appealed the denial to the Tribunal and on October 5, 2015 a Member of the General Division denied his appeal. The Applicant seeks leave to appeal the General Division decision, (the Application). The Tribunal received the Application on January 13, 2016.

## **GROUND OF THE APPLICATION**

[4] The Applicant's only submissions were that he had received paperwork disputing areas of why he was denied and was attaching that paperwork. He explained that his Application was late because he had been waiting for the paperwork, namely, reports from a physical medicine and rehabilitation specialist, Michel Lacerte, dated April 23, 2012; August 7, 2012; and October 1, 2012. It also included medical reports from Dr. Ganesh Ram dated December 28, 2012; Dr. Janel Gracey dated September 11, 2013 and Dr. John Bryans dated February 25, 2013.

[5] On May 20, 2016, the Tribunal wrote to the Applicant to advise him that his Application was incomplete. He was advised to file the missing information no later than June 24, 2016. He was also alerted to the possibility that if he submitted insufficient detail, the Appeal Division Member assigned to his file might decide the matter on the basis of the material file as of June 24, 2016 without further notice to him. The Applicant was required to identify the grounds of his appeal; and also to request an extension of time to file the Application.

[6] The Tribunal record shows that the Applicant communicated with the Tribunal for the purpose of clarifying the letter of May 20, 2016. It also shows that he promised to send his submissions in by facsimile transmission. As of the date of writing the Tribunal has not received any submission from the Applicant.

## **ISSUE**

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

## **THE GOVERNING STATUTORY PROVISIONS**

[8] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, (DESD Act) govern the granting of leave to appeal. As provided by subsection 56(1) of the DESD Act, leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division. According to subsection 56(1) “an appeal to the Appeal Division may only be brought if leave to appeal is granted.” Subsection 58(3) provides that “the Appeal Division must either grant or refuse leave to appeal.”

[9] Subsection 58(1) of the *Department of Employment and Social Development, (DESD), Act*, sets out the only three grounds of appeal, namely:-

- 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.

## **PRELIMINARY MATTERS**

### **Is the Application late?**

[10] The General Division decision is dated October 5, 2015 and the Application is date stamped as having been received on January 13, 2016. Section 19 of the *Social Security Tribunal Regulations, SOR/2013-60* sets out when decisions are deemed to have been communicated. In the case of decisions made under subsections 53(1) and 54 (1) of the

Department of Employment and Social Development Act, (DESD, Act, which this decision is, the decision is deemed to have been communicated to the Applicant 10 days after the day on which it was mailed to him. In this case, he stated that he received the decision on October 9, 2015. Therefore, the Appeal Division accepts that date as the date on which the decision was communicated. This would make the initial application 6 days late.

[11] The issue is complicated by the fact that the Application was incomplete and remains incomplete to this date. Section 40 of the Regulations sets out the requirements for a complete Application. Thus, it can be argued that there is no Application properly before the Appeal Division. Certainly, there is no request to extend the time limit for filing the Application. But this is facile. Therefore, the Appeal Division will go on to consider whether it should extend the time for filing the Application. In so doing the Appeal Division will consider the factors set out in in *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883. The Appeal Division will also consider the best interest of the case.

[12] On its face, it would appear that the Applicant has a continuing intention to appeal the General Division decision. He made an effort to obtain information that he thought would assist his case and he did file an application on the prescribed form close to the ninety-day time limit. The Appeal Division is also satisfied that the delay being minor the Respondent would not be prejudiced in the preparation and presentation of its case.

[13] The Appeal Division also finds that the Applicant has not provided a satisfactory explanation for the delay. He stated he was waiting for documents that would respond to certain aspects of the General Division decision. However, given the dates of the documents he provided, the Appeal Division is not satisfied that this is a satisfactory explanation as it is not satisfied he could not obtain the reports earlier. The position is even less clear when it comes to deciding whether or not he has an arguable case, as the Applicant has not put forward any ground in support of the application.

[14] When all of the above is taken into consideration, the Appeal Division is not persuaded that there is a sufficient basis on which it could extend the time limit, nor is it persuaded in all of the circumstances of the case that it is in the best interest of justice to extend the time limit of its own motion, there being no such request before it. Accordingly, the Appeal Division refuses the Application on the basis that it is late.

## ANALYSIS

[15] In order to obtain leave to appeal, subsection 58(2) of the DESD Act requires an applicant to satisfy the Appeal Division that their appeal would have a reasonable chance of success; otherwise the Appeal Division must refuse leave to appeal. Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

[16] An applicant satisfies the Appeal Division that his appeal would have a reasonable chance of success by raising an arguable case.<sup>1</sup> In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 and in *Fancy v. Canada (Attorney General)*, 2010 FCA 63 an arguable case has been equated to a reasonable chance of success. *Tracey v. Canada (Attorney General)*, 2015 FC 1300 supports the view that in assessing an application for leave to appeal the Appeal Division must first determine whether any of the Applicant’s reasons for appeal fall within any of the stated grounds of appeal.

[17] Even if the Appeal Division had not refused the Application for lateness, it would have refused the Application as disclosing no ground of appeal that would have a reasonable chance of success. The Applicant provided no other reason for the Application than that he was waiting for paperwork that would disprove parts of the General Division decision and, presumably, establish that he met the CPP definition of severe and prolonged disability. It may well be that the information he provided can support an application under section 66 of the DESD Act. However, his stated reasons for the Application do not make for a ground of appeal, let alone one that would have a reasonable chance of success. Leave to appeal cannot be granted.

## CONCLUSION

[18] Leave to appeal is refused.

*Hazelyn Ross*  
Member, Appeal Division

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<sup>1</sup> *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).