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

Citation: *C. M. v. Minister of Employment and Social Development*, 2016 SSTADIS 463

Tribunal File Number: AD-16-784

BETWEEN:

**C. M.**

Appellant

and

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

Respondent

---

# SOCIAL SECURITY TRIBUNAL DECISION

## Appeal Division

---

Decision on Request for Extension of Time by: Neil Nawaz

Date of Decision: November 30, 2016

## REASONS AND DECISION

## DECISION

[1] Extension of time to appeal and leave to appeal are refused.

## INTRODUCTION

[2] The Applicant seeks leave to appeal the decision of the General Division (GD) of the Social Security Tribunal (SST) dated December 31, 2014. The GD had conducted a review of the documentary record and determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan* (CPP), as it found that her disability was not "severe" prior to the minimum qualifying period (MQP) ending December 31, 2013.

[3] On June 2, 2016, the Applicant submitted with the Appeal Division (AD) of the Social Security Tribunal an application requesting leave to appeal, beyond the time limit set out in paragraph 57(1)(b) of the *Department of Employment and Social Development Act* (DESDA).

## ISSUE

[4] For this application to succeed, I must first determine whether the Applicant's late appeal can be considered and then satisfy myself that the appeal has a reasonable chance of success.

## THE LAW DESDA

[5] According to subsection 56(1) of the DESDA, an appeal to the AD may only be brought if leave to appeal is granted.

[6] Pursuant to paragraph 57(1)(b), an appeal must be brought to the AD within 90 days after the day on which the decision was communicated to the appellant. Under subsection 57(2), the AD may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the day on which the decision is communicated to the appellant.

[7] Subsection 58(2) of the DESDA provides that leave to appeal is refused if the AD is satisfied that the appeal has no reasonable chance of success.

[8] According to subsection 58(1), the only grounds of appeal are 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.

[9] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove the case.

[10] The Federal Court of Appeal has concluded that the question of whether a party has an arguable case at law is akin to determining whether that party, legally, has a reasonable chance of success – *Canada (MHRD) v. Hogervorst*[1] and *Fancy v. Canada (A.G.).*[2]

**APPLICANT'S SUBMISSIONS**

[11] In her application requesting leave, the Applicant submitted that she was late in filing her appeal because documents were stolen from her room, possibly by her former landlord. She also suggested she had not received mail related to her CPP application because she moved in January 2015.

[12] In a letter dated July 4, 2016, the Applicant wrote that her documents had been lost and alleged that the SST had mishandled her information. She said that her previous treatments

---

[1] *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41.
[2] *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

providers had not listened to her health concerns, but she now had new doctors, who confirmed that she is unable to work at any job. She required back surgery but was at such high risk that no doctor wanted to perform it.

[13] The Applicant also submitted an assortment of medical reports, some of which were prepared after the hearing before the GD, while others were dated as long ago as 1994.

**ANALYSIS**

[14] Having reviewed the documentary record, I must find that the Applicant is barred from pursuing her application for leave. The GD's decision was issued and mailed to the Applicant at her last known residential address on January 2, 2015. According to section 6 of the *Social Security Tribunal Regulations* (SST Regulations), a party must file with the SST any change in their contact information without delay. According to subsection 19(a) of the SST Regulations, a decision is deemed to have been communicated to a party ten days after the date on which it was mailed. From that point, according to section 57, an applicant has 90 days in which to submit an appeal, and no extension may be granted after one year has elapsed.

[15] In this case, the application for leave to appeal was submitted to the AD more than 17 months after the issuance of the GD's decision. For appeals submitted more than one year after reconsideration, the law is strict and unambiguous. While the Applicant attributed her lateness to a dispute with her landlord and subsequent change of address, once a year has passed, the wording of subsection 57(2) all but eliminates scope for a decision-maker to exercise discretion or consider extenuating circumstances.

[16] It is indeed unfortunate that a filing lapse may have denied the Applicant an appeal, but I am bound to follow the letter of the law. The Applicant's submissions amount to a plea that I act "fairly" and simply waive the filing deadline, but I lack the authority to do so and can only exercise such jurisdiction as granted by the AD's enabling statute. Support for this position may be found in *Pincombe v. Canada*,[3] among other cases, which have held that an administrative tribunal is not a court but a statutory decision-maker and therefore not empowered to provide any form of equitable relief.

[3] *Pincombe v. Canada* (A.G.) [1995] FCJ No. 1320 (FCA).

[17] A final note: The Applicant's request for leave to appeal included documents that were not before the GD at the time of hearing. An appeal to the AD is not a time to reargue one's case, nor is it an occasion on which additional evidence can be considered, given the constraints of subsection 58(1) of the DESDA, which do not give the AD any authority to make a decision based on the merits of the case. Once a hearing is concluded, there is a very limited basis upon which any new or additional information can be raised. An applicant could consider making an application to the GD to rescind or amend its decision. However, an applicant would need to comply with the requirements set out in section 66 of the DESDA and sections 45 and 46 of the SST Regulations. Not only are there strict deadlines and requirements that must be met to succeed in an application to rescind or amend, but an applicant would also need to demonstrate that any new facts are material and that they could not have been discovered at the time of the hearing with the exercise of reasonable diligence.

**CONCLUSION**

[18] As the Applicant's application for leave to appeal comes more than one year after the GD's decision was communicated to her, I need not consider whether the Applicant would stand a reasonable chance of success on appeal. The application is refused.

Member, Appeal Division