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

[TRANSLATION]

Citation: *M. D. v. Minister of Employment and Social Development*, 2016 SSTADIS 497

Tribunal File Number: AD-16-795

BETWEEN:

M. D.

Applicant

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

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: December 21, 2016

REASONS AND DECISION

INTRODUCTION

[1] On May 4, 2016, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) rejected the Applicant's appeal. The GD held as follows:

a) The issue is whether the appeal was filed within the statutory time limit;

b) A reconsideration decision by the Respondent was dated May 15, 2014, and was apparently communicated to the appellant by May 25, 2014;

c) Under the *Department of Employment and Social Development Act* (the *Act*) the GD may provide an extension of up to one year after the date on which a decision is communicated to an appellant for the filing of an appeal;

d) The appellant had until August 23, 2014, to file an appeal with the GD;

e) Although the appellant filed an incomplete notice of appeal on July 17, 2014, the appeal was complete as of October 19, 2015;

f) The Applicant brought the remedy to the GD more than one year after the decision was communicated to him; and

g) Subsection 52(2) of the *Act* must be applied and the GD cannot extend the one-year period for filing an appeal.

[2] The Applicant filed an application for leave to appeal (Application) before the Appeal Division on July 4, 2016, within the prescribed time.

History of the file

[3] In October 2013, the Respondent refused to grant disability benefits under the *Canada Pension Plan* (CPP) to the Applicant. It had determined that the Applicant had sufficient CPP contributions up to December 2014 but that his disability was not severe and prolonged within the meaning of the CPP legislation.

[4] On January 16, 2014, the Applicant sought reconsideration of the Respondent's original decision.

[5] On May 15, 2014, the Respondent informed the Applicant that it would not amend its decision.

[6] The Tribunal received a notice of appeal by fax on July 17, 2014, in the Applicant's name, but the document was not signed. Documents concerning the Applicant were appended to the notice.

[7] In a letter dated July 21, 2014, the Tribunal notified the Applicant that his notice of appeal was incomplete. The letter notes as follows:

a) That an appeal has not been properly filed until the Tribunal has received all of the required information;

b) The information needed to complete the notice of appeal; and

c) The time limit for filing the completed notice of appeal.

[8] In September 2015, the Applicant called the Tribunal to discuss the information required to complete his notice of appeal.

[9] The Applicant filed the required information on October 21, 2015.

ISSUE

[10] Does the appeal have a reasonable chance of success?

THE LAW AND ANALYSIS

[11] Subsections 56(1) and 58(3) of the *Act* provide that "[a]n appeal to the Appeal Division may only be brought if leave to appeal is granted" and that the Appeal Division "must either grant or refuse leave to appeal".

[12] Under subsection 58(2) of the *Act*, "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

[13] Under subsection 58(1) of the *Act*, the following are the only grounds of appeal:

(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.

[14] The Tribunal will grant leave to appeal if it is satisfied that the Applicant has demonstrated that one of the aforementioned grounds of appeal has a reasonable chance of success.

[15] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the Act, whether there is a question of law, fact or jurisdiction relating to a principle of natural justice the answer to which may justify setting aside the decision under review.

[16] The Applicant notes in his Application that

(a) The doctor's letters on file show that he is [translation] "a person who is unfit to work";

(b) He relied on his federal MP and his office's promise to [translation] "take care of it";

(c) He was waiting to hear from his MP's office; and

(d) He was late with the GD for these reasons.

[17] The Applicant makes no reference to subsection 58(1) of the *Act* in outlining his grounds for appeal. According to the latter, he appears to suggest that the GD 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.

[18] It is not the role of a Member of the Appeal Division who must determine whether leave to appeal should be granted to reassess the evidence submitted before the General Division. According to my reading of the file and the GD's decision, the grounds that the Applicant raised in his Application – that he was relying on his federal MP – have already been brought before the GD.

[19] Mere repetition of the arguments already made before the GD is not sufficient to show that one of the above grounds of appeal has a reasonable chance of success.

[20] An appeal is not a hearing on the merits of an applicant's claim for Employment Insurance benefits. This case involves a notice of appeal that was filed after the one-year extension period. Subsection 52(2) of the *Act* is clear: the GD can extend the time for filing an appeal by no more than one year.

[21] I find that the GD did not base 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.

[22] The GD's decision referred to the provisions of the *Act* that apply to a notice of appeal filed late. The GD applied the law to the Applicant's situation. The decision rendered is not subject to an error of law.

[23] Since the Applicant does not raise any of the grounds of appeal set out in subsection 58(1) of the *Act*, the appeal has no reasonable chance of success.

CONCLUSION

[24] Leave to appeal is denied.

Shu-Tai Cheng
Member, Appeal Division