



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. S. v. Minister of Employment and Social Development*, 2016 SSTADIS 491

Tribunal File Number: AD-16-736

BETWEEN:

S. S.

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 19, 2016

REASONS AND DECISION

INTRODUCTION

[1] On February 23, 2016, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) determined that the Respondent had exercised its discretion judicially in denying the Applicant's late request for an extension of time to apply for reconsideration under the *Canada Pension Plan* (CPP).

[2] The Applicant had filed an application for a CPP disability pension in November 2011. The Respondent denied this application in February 2012, and the Applicant received notification of this decision in March 2012. The Applicant's request for a late reconsideration was received by the Respondent in February 2014. In order for the request for late reconsideration to proceed, the Applicant needed an extension of the 90 day time limit to request reconsideration.

[3] On April 1, 2014, the Respondent decided that it "cannot accept [the Applicant's] late request for reconsideration". As such, her application was closed and the Respondent's decision to deny a CPP pension was final.

[4] The Applicant filed a Notice of Appeal with the GD of the Tribunal in June 2014.

[5] The GD decided to proceed by way of a videoconference hearing. The Applicant was present and testified at the hearing. She was also represented by legal counsel. The Respondent did not attend the GD hearing.

ISSUE

[6] Whether the appeal has a reasonable chance of success.

THE LAW

[7] Pursuant to subsections 57(1) and (2) of the *Department of Employment and Social Development Act* (DESD Act), an application for leave to appeal must be made to the appeal division (AD) within 90 days after the day on which the decision appealed from was communicated to the appellant. Further, "The Appeal Division may allow further time within

which an application for leave is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant.”

[8] According to subsections 56(1) and 58(3) of the DESD Act, “An appeal to the Appeal Division may only be brought if leave to appeal is granted” and “The Appeal Division must either grant or refuse leave to appeal.”

[9] 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.”

[10] Subsection 58(1) of the DESD Act states that 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.

SUBMISSIONS

[11] The Applicant’s reasons for appeal can be summarized as follows:

- a) The Respondent did not act judicially, acted in bad faith, took into account an irrelevant factor and/or ignored a relevant factor;
- b) Specifically, the Respondent:
 - 1. Considered whether there was a reasonable chance of success despite its own decision finding that the Applicant qualified under the CPP;
 - 2. Failed to make a finding with respect to chance of success;

3. Failed to consider whether the Applicant's efforts to obtain her medical file were grossly insufficient;
4. Made the length of the delay a deciding factor; and
5. Failed to consider the totality of her medical conditions and impairments.

ANALYSIS

[12] The time line is not in dispute. The Applicant received the Respondent's decision letter in March 2012. She requested late reconsideration in February 2014. The GD found that there was a delay of over 600 days from the end of the 90 day time limit to request reconsideration.

[13] The issue before the GD was whether the Respondent Minister exercised his discretion judicially when he refused to allow a longer period of time for the Appellant to request reconsideration of the initial decision letter denying her a disability pension.

[14] The GD reviewed the Applicant's evidence (testimonial and documentary) and the submissions of the parties. It rendered a written decision that is understandable, sufficiently detailed and logically coherent. The GD weighed the evidence and gave reasons for its analysis of the evidence and the law. These are the proper roles of the GD.

[15] The Applicant submits that the Respondent did not act judicially, acted in bad faith, took into account an irrelevant factor and/or ignored a relevant factor. She gives as reasons for her delay in applying for reconsideration that: she was denied CPP benefits because her medical documentation was not complete; she did not request reconsideration until she had further medical documentation (in October 2013); she submitted additional documentation in October 2013 but was told in December 2013 that the time limit to request reconsideration had expired; and her personal circumstances left her depressed and hopeless.

[16] Before the GD, the Applicant advanced similar arguments. The Applicant's evidence was explained in detail in the GD decision on pages 3 to 4. The Applicant's submissions before the GD were summarized on page 4 and discussed at pages 5 to 7; they included many of the points in support of the Application and are noted in paragraphs 11 and 15 above.

[17] The GD stated the correct legislative basis and legal test. It found that the Respondent exercised his discretion judiciously after reviewing all the information provided by the Applicant. This conclusion was explained in paragraphs 24 to 30 of the GD decision.

[18] For the most part, the Application repeats the Applicant's evidence and submissions before the GD.

[19] Once leave to appeal has been granted, the role of the AD is to determine if a reviewable error set out in subsection 58(1) of the DESD Act has been made by the GD and, if so, to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the AD to intervene. It is not the role of the AD to re-hear the case *de novo*. It is in this context that the AD must determine, at the leave to appeal stage, whether the appeal has a reasonable chance of success.

[20] As to specific arguments in the Application, the Applicant appears to confuse the Minister and the Tribunal at paragraphs 4, 8, and 10 of the "Section 3(C)" portion of the Application and possibly paragraphs 1, 3, 4 and 5 of the "Section 3(D)" portion. The present decision, relating to leave to appeal to the AD, does not turn on the Applicant's use of the terms "the Minister" and "the Tribunal".

[21] The Applicant suggests that the Respondent Minister erred in considering whether her request for reconsideration had a reasonable chance of success because it had made a decision on the same issue in its April 1, 2014 decision that she qualified for a CPP disability pension. The decision denying an extension (of April 1, 2014) did not determine that she qualified for a CPP disability pension but rather that she qualified on her earnings and contributions "with an LPDOO of December 2013 at the date of her application". In other words, her minimum qualifying period (MQP) was December 31, 2013.

[22] I note that the GD stated that its role is not to determine whether the Respondent made the correct determination but whether its discretion was exercised in a judicial manner. The GD found that the Respondent considered if there was a reasonable chance of success and considered the medical evidence on file relevant to the MQP. The Applicant is not satisfied with the Respondent's consideration of the issue of reasonable chance of success on the merits of her

CPP application. This, however, is not enough to establish a reasonable chance of success on one of the reviewable errors set out in subsection 58(1) of the DESD Act.

[23] That the GD did not consider whether the Applicant's efforts to obtain her medical file were "grossly insufficient" is also not a reviewable error. The applicable legal test is whether the Respondent exercised his discretion judicially, not whether the Applicant's efforts were grossly insufficient.

[24] As to making the length of her delay in requesting reconsideration a deciding factor, the length of the delay is relevant. It is a fact that may relate to each of the four criteria that the Respondent considers in a request for an extension of the reconsideration time limit. While the Applicant argues that paragraphs 20 to 28 of the GD decision made the length of delay "the deciding factor", this was not the case. The GD's reference to the length of delay is not a reviewable error.

[25] The Applicant also argues that the Respondent (although she might mean the GD) failed to consider the totality of her medical conditions and impairments. The role of the GD was to determine whether the Respondent exercised his discretion judicially, which the GD did. The GD was satisfied that the Respondent reviewed all the information provided by the Applicant.

[26] I have read and carefully considered the GD's decision and the record. There is no suggestion that the GD failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law or any erroneous findings of fact which the GD may have made in a perverse or capricious manner or without regard for the material before it in coming to its decision.

[27] In order to have a reasonable chance of success, the Applicant must explain how at least one reviewable error has been made by the GD. The Application is deficient in this regard, and I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[28] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division