



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. B. v. Minister of Employment and Social Development*, 2017 SSTADIS 147

Tribunal File Number: AD-16-910

BETWEEN:

A. B.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: April 6, 2017

REASONS AND DECISION

INTRODUCTION

[1] On March 29, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Applicant appealed a decision of the Respondent, denying a disability pension under the *Canada Pension Plan* (CPP), beyond the one-year absolute limit set out in paragraph 52(1)(b) of the *Department of Employment and Social Development Act* (DESD Act). Therefore, the General Division refused an extension of time to appeal.

[2] The Applicant filed an application for leave to appeal (application) with the Appeal Division of the Tribunal on July 7, 2016.

[3] The Applicant filed an application for CPP benefits in 2013. The Respondent denied the application initially and on reconsideration. The date of the reconsideration decision is March 21, 2014. The time limit for filing an appeal of the reconsideration decision is 90 days. The General Division found that an appeal would have had to be filed on or before June 30, 2014, to have been within the appeal period.

[4] The Applicant filed an incomplete appeal to the General Division on November 19, 2015, and subsequently completed the appeal.

[5] The General Division determined that the appeal was filed more than one year late and that it did not have the discretion to grant an extension of time.

ISSUE

[6] The member must decide whether the appeal has a reasonable chance of success.

THE LAW

[7] 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.”

[8] Subsection 58(2) of the DESD Act provides that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

[9] 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

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

- a) The General Division refused an extension of time to appeal the denial of CPP benefits by the Respondent;
- b) He is asking the Appeal Division for an extension of time;
- c) He has never seen the medical reports of Dr. Chris Lawand and would like a copy of them;
- d) There is no mention of psychological and psychiatric issues in his history;
- e) He does not understand the disability tax credit or how to qualify for it; and
- f) He wants CPP disability benefits.

ANALYSIS

[11] The situation before the General Division was the Applicant’s late appeal from a reconsideration decision that the Respondent rendered in March 2014.

[12] The General Division determined that because the Applicant's appeal to the General Division was filed more than one year after the appeal period (of 90 days) had expired, it "had no choice but to deny the request for an extension of time to file the notice of appeal."

[13] The application before the Appeal Division essentially argues that the General Division decision was wrong.

[14] However, the General Division based its decision on the applicable legislation and the determination that the appeal was filed beyond the one-year absolute limitation on extensions of time. It did not fail to observe a principle of natural justice or commit an error in jurisdiction.

[15] The General Division stated the correct legislative basis for an extension of time beyond a one-year period. It found that the Applicant had until June 30, 2014, to file his appeal from the reconsideration decision and that he filed the appeal on November 19, 2015. This exceeded the one-year limitation date by more than four months.

[16] The Applicant suggests that he was treated unfairly by the Respondent. However, he has not explained how at least one reviewable error has been made by the General Division.

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

[18] I have read and carefully considered the General Division's decision and the record. There is no suggestion that the General Division 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 that the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[19] While I sympathize with the Applicant's frustration, I find that the General Division decision was correct in concluding that the one-year limit set out in subsection 52(2) of the DESD Act is an absolute limitation and that the Tribunal does not have the discretion to grant an extension of time exceeding one year.

[20] The Appeal Division of the Tribunal also cannot extend a filing period beyond the limitation period set by the DESD Act.

[21] For the reasons stated above, I am satisfied that the appeal has no reasonable chance of success.

[22] Unrelated to the issue before the Appeal Division, the Applicant has stated that he does not understand the disability tax credit or how to qualify for it. To obtain information about tax credits, he should contact the Canada Revenue Agency. The Applicant also requested a copy of Dr. Lawand's medical reports. A copy of the entire reconsideration file, which includes these medical reports, was sent to the Applicant in September 2016.

CONCLUSION

[23] The application for leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division