



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. L. v. Minister of Employment and Social Development*, 2017 SSTADIS 167

Tribunal File Number: AD-16-670

BETWEEN:

**R. L.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

---

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

---

Decision on Request for Extension of Time by: Jennifer Cleversey-Moffitt

Date of Decision: April 28, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] On March 31, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* was not payable to this Applicant.

[2] The Applicant filed an application for leave to appeal (application) with the Appeal Division of the Tribunal on May 11, 2016. Section 58 of the *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal that may be considered to grant leave to appeal a decision of the General Division, which 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.

[3] On May 16, 2016, the Tribunal sent to the Applicant a letter indicating that the application was incomplete. In that letter, the Tribunal reminded the Applicant of the statutory requirement to file a complete application for leave to appeal within 90 days of receiving the General Division decision as set out in paragraph 57(1)(b) of the DESD Act. The letter further instructed that if the Applicant were to provide all of the required information by June 13, 2016, the Tribunal would accept the complete application as having been received on May 11, 2016. Additionally, the letter explained that if the missing information was filed after June 13, 2016, the complete application would be considered received by the Tribunal on the date the Tribunal received all of the missing information.

[4] In a fax dated July 29, 2016, the Applicant provided the Tribunal with the missing information.

[5] In a letter dated August 2, 2016, the Tribunal acknowledged receipt of the missing information and explained that, although the application was now complete, it was completed

after the 90-day time limit set out in paragraph 57(1)(b) of the DESD Act. It went on to further explain that because the application was filed beyond the 90-day time limit, there would now need to be a review to determine whether an extension of time should be granted. The Applicant responded in a letter, which the Tribunal received on January 27, 2017.

## **ISSUE**

[6] The Member must decide whether an extension of time to file the application should be granted.

## **THE LAW**

[7] Pursuant to paragraph 57(1)(b) of the DESD Act, an application must be made to the Appeal Division within 90 days after the day on which the decision was communicated to the Applicant. A Tribunal member has the authority to extend the time for filing of an application for leave to appeal pursuant to subsection 57(2) of the DESD Act. In this case, the letter of May 11, 2016, expressly stated that if the Applicant was able to provide the required information to complete his application by June 13, 2016, then the Tribunal would consider his application for leave to appeal filed on May 11, 2016. However, if the missing information was received after June 13, 2016, then the application would be considered received by the Tribunal on the date the Tribunal had all of the missing information.

[8] The missing information was received on July 29, 2016, and, as such, the application was considered late.

[9] To determine whether or not to grant an extension of time, the Member must consider and weigh the criteria as set out in case law. In *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883, the Federal Court stated that the criteria are as follows:

- a) A continuing intention to pursue the application or appeal;
- b) The matter discloses an arguable case;
- c) There is a reasonable explanation for the delay; and

d) There is no prejudice to the other party in allowing the extension.

[10] The weight to be given to each of the *Gattellaro* factors may differ in each case, and in some cases, different factors will be relevant. The overriding consideration is that the interests of justice be served – *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

## **SUBMISSIONS**

[11] The Applicant submitted that he was appealing because he was in need of two more prosthetic legs.

[12] When told that the Tribunal required more information, the Applicant wrote back explaining that, at that point, he required one more prosthetic leg and argued that this reason fell under the third enumerated ground of appeal contained in paragraph 58(1)(c) of the DESDA Act – that 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.

[13] On August 2, 2016, the Tribunal sent the Applicant a letter to notify him that the required information was received late. However, the Applicant did not respond until January 27, 2017, when the Tribunal received his letter.. In this letter, the Applicant explained that he had sent in all of the required information and thought it was time to make a decision.

[14] As an aside, it should be noted that in the original incomplete application that was filed prior to the 90-day deadline, the Applicant had stated a reason for late submission. He indicated that he was in the hospital. But as this document, with that note, was filed on May 11, 2016, it is apparent that this was not in relation to the issue of the late application that was determined only after the July 29, 2016, documents were filed.

## **ANALYSIS**

[15] To determine whether an extension of time should be granted, each of the *Gattellaro* criteria will be analysed separately.

### ***Continuing Intention to Pursue the Appeal***

[16] The initial incomplete application was filed within the 90-day deadline. The Tribunal asked for additional information and gave clear instructions with respect to the date by which it needed the information to accept the application as being filed on May 11, 2016. The Applicant did not file the information within the requested time frame and, in addition, did not file the missing documents within the prescribed 90 days. However, the Applicant did respond, albeit late.

[17] Although much of the file analysis is done by way of written submissions, this particular Applicant communicated with the Tribunal by telephone on a regular basis.

[18] The Applicant called the Tribunal with respect to his appeal to the Appeal Division on the following dates: May 20, 2016; June 22, 2016; July 28, 2016; July, 29, 2016; August 2, 2016; August 3, 2016; August 4, 2016; August 9, 2016; August 30, 2016; September 23, 2016; November 4, 2016; November 22, 2016; December 7, 2016; December 20, 2016; January 16, 2017; January 19, 2017; January 26, 2017; January 30, 2017; February 7, 2017; February 21, 2017; March 9, 2017; and April 11, 2017. Additionally, the Applicant had his local MP's office call twice on his behalf on May 25, 2016, and June 7, 2016.

[19] Given the fact that the Applicant continued and continues to contact the Tribunal to determine the status of his application is very indicative of a continuing intention to pursue the appeal.

### ***Arguable Case***

[20] The Federal Court of Appeal 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 (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[21] The General Division found that the Applicant's Minimum Qualifying Period (MQP) was December 31, 1996, and that the serious medical condition in question was attributed to his fall in 2008. This means that his fall occurred after the MQP ended and that the Applicant was not disabled before his MQP ended on December 31, 1996.

[22] The General Division decision also confirmed that the Applicant indicated at that hearing that “whatever was on file for his earnings was likely accurate.”

[23] The Applicant’s submissions argue that, because he now needs new prosthetic legs, that the General Division’s decision was wrong.

[24] The General Division did not make a significant error regarding the facts in the appeal file. At paragraph 16 of the General Division decision, it was noted that the Applicant agreed that he fell from a ladder in 2008 and that, prior to that fall, he did not have a medical condition that prevented him from working. Moreover, in his application for leave to appeal, he even noted that the date of the accident was August 15, 2008.

[25] The Applicant did not have a severe and prolonged disability on or before his MQP date of December 31, 1996, and thus does not qualify for a CPP disability pension. There is no arguable case here.

***Reasonable Explanation for the Delay***

[26] No written explanation for the delay was submitted; however, in a telephone conversation with the Tribunal that was recorded on August 30, 2016, the Applicant indicated that he had been in the hospital for an extended period of time. Reasons for hospitalization and specific dates were not given. The hospitalization was also an event that was indicated on the original incomplete application, even though the incomplete application was filed on time. The Applicant did not deliver an explicit and complete reason to the Tribunal for the delay once it was explained to the Applicant that the application was late. I accept that the Applicant was in hospital, but without any other details – specifically, the dates of hospitalization - this fails to be a reasonable explanation for a delay in response to the Tribunal.

***Prejudice to the Other Party***

[27] Extending the Applicant's time to appeal would not prejudice the Respondent's interests given the short period of time that has elapsed following the expiry of the statutory deadline. The Respondent's ability to respond would not be unduly affected by allowing the extension.

**CONCLUSION**

[28] Having considered the above-noted factors, I conclude that the application for an extension of time to appeal could have succeeded on two of the four *Gattellaro* grounds: there was a continuing intention to appeal, and the Respondent would not have been prejudiced by such a small extension of time, although the explanation for the delay was incomplete. However, where the analysis really falls short is in determining whether there were any appealable grounds upon which the Applicant would have had an arguable case or a reasonable chance of success. The Applicant admitted that he did not have a severe and prolonged disability on or before December 31, 1996. The Appeal Division's authority under subsection 58(1) of the DESD Act allows for the granting of an appeal only if the Applicant's reasons for appeal fall within the specified grounds and whether any of them have a reasonable chance of success. The Applicant's medical condition arose out of an event in 2008 and therefore does not fall within the MQP. The General Division 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; the General Division assessed the information on file and applied the legislation correctly.

[29] In consideration of the *Gattellaro* factors and in the interests of justice, an extension of time to apply for leave to appeal is refused.

Jennifer Cleversey-Moffitt  
Member, Appeal Division