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

Citation: *P. G. v. Minister of Employment and Social Development*, 2017 SSTADIS 265

Tribunal File Number: AD-16-1314

BETWEEN:

P. G.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: June 8, 2017

REASONS AND DECISION

DECISION

[1] Leave to appeal is refused.

INTRODUCTION

[2] The Applicant applied for a *Canada Pension Plan* (CPP) disability pension on

May 1, 2014. The Respondent refused the application initially and on reconsideration in a letter dated February 6, 2015 (reconsideration letter).

[3] On July 19, 2016, the Applicant filed a notice of appeal with the General Division of the Social Security Tribunal of Canada (Tribunal), beyond the time limit set out in the *Department of Employment and Social Development Act* (DESDA).

[4] In a decision dated October 3, 2016, the General Division found that the Applicant's appeal was brought more than one year after he received the reconsideration letter. As a result, pursuant to subsection 52(2) of the DESDA, no extension of time to file an appeal was granted.

[5] The Applicant's authorized representative filed an application for leave to appeal with the Tribunal's Appeal Division on November 22, 2016, within the time limit set out in paragraph 57(1)(*b*) of the DESDA.

ISSUE

[6] For this application to succeed, I must be satisfied that the appeal has a reasonable chance of success.

THE LAW

[7] Pursuant to paragraph 52(1)(*b*) of the DESDA, an appeal must be brought to the General Division within 90 days after the day on which the decision was communicated to the appellant. Under subsection 52(2), the General Division 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.

[8] According to subsections 56(1) and 58(3) of the DESDA, an appeal to the Appeal Division may be brought only if leave to appeal is granted. The Appeal Division must either grant or refuse leave to appeal. Subsection 58(2) of the DESDA provides that leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

[9] According to subsection 58(1) of the DESDA, 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 made in a perverse or capricious manner or without regard for the material before it.

[10] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is an initial 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 to appeal stage, the applicant does not have to prove the case.

[11] 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 v. Hogervorst*[1] and *Fancy v. Canada.*[2]

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

APPLICANT'S SUBMISSIONS

[12] The Applicant's application requesting leave to appeal was accompanied by a letter dated November 16, 2016, prepared by his authorized representative and setting out grounds for appeal, which I summarize as follows:

(a) The Applicant had a valid reason for the delay in submitting his appeal to the General Division. He and his wife were confused about the appeals process and misunderstood the distinction between a reconsideration letter and a General Division decision.

(b) The Applicant had a continuing intention to appeal in the period following issuance of the reconsideration letter.

(c) The Applicant had an arguable case that he suffers from a severe and prolonged disability, as supported by numerous medical reports by his treating physicians. As well, the Respondent relied on several factual errors to refuse the Applicant's CPP disability claim.

(d) There was no evidence that the other party has been or would be prejudiced if the appeal were allowed to proceed.

ANALYSIS

[13] I have reviewed the entirety of the file that was before the General Division, and I see no reasonable chance of success on the grounds that the Applicant has submitted. The General Division found that the Applicant submitted the notice of appeal to the Tribunal more than one year after receipt of the Respondent's reconsideration letter, and I can see no arguable case that, in doing so, the General Division relied on an erroneous finding of fact, misapplied the law or treated the Applicant unfairly.

[14] The Applicant's representative acknowledges that the notice of appeal was not submitted until July 19, 2016—more than 17 months after the Respondent issued its reconsideration letter. He has also offered submissions that mirror the factors set out in *Canada*

v. Gattellaro[3] and that are similar to arguments that were already presented to the General Division last year.

[15] For appeals submitted more than one year after reconsideration, the law is strict and unambiguous. Subsection 52(2) of the DESDA states that *in no case* may an appeal be brought more than one year after the reconsideration decision was communicated to the appellant. While factors such as those set out in *Gattellaro* may be considered for appeals that come after 90 days but within a year, the wording of subsection 52(2) all but eliminates scope for a decision-maker to exercise discretion once the year has elapsed. The Applicant's intention to pursue an appeal then becomes irrelevant, as does his explanation for being late, the merits of his disability claim or the improbability of prejudice to the other party.

[16] It is indeed unfortunate that a filing lapse may have cost the Applicant an opportunity to appeal, but the General Division was bound to follow the letter of the law, and so am I. The Applicant may regard this outcome as unfair, but I can exercise only such jurisdiction as granted by the Appeal Division's enabling statute. Support for this position may be found in *Pincombe v. Canada*,[4] 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.

CONCLUSION

[17] In my view, the General Division did not base its decision to deny an extension to appeal on an erroneous finding of fact, nor did it err in law or breach a principle of natural justice. As I see no reasonable chance of success on the grounds of appeal put forward, the application for leave to appeal is refused.

Member, Appeal Division

[3] *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883.
[4] *Pincombe v. Canada (Attorney General)*, [1995] FCJ No. 1320 (FCA).