



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Y. A. v. Minister of Employment and Social Development*, 2017 SSTADIS 269

Tribunal File Number: AD-16-740

BETWEEN:

**Y. A.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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

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Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: June 12, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] On February 25, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Respondent exercised its discretion judiciously when it refused to extend the time for requesting a reconsideration decision under the *Canada Pension Plan* (CPP).

[2] The Applicant filed an incomplete application for leave to appeal (Application) with the Tribunal's Appeal Division on May 26, 2016. She had requested an extension of time and the Appeal Division's Vice-Chair had granted an extension of time to July 5, 2016, within which to complete the Application.

[3] The Application was completed on December 16, 2016, and, therefore, it was not filed within the extended time limit for appeal to the Appeal Division.

### ISSUES

[4] In order for the Application to be considered, an extension of time to apply for leave to appeal must be granted.

[5] In order to succeed on this Application for leave to appeal, the Applicant must show that the appeal has a reasonable chance of success.

### THE LAW

[6] 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 within 90 days after the day on which the decision appealed from was communicated to the appellant. Moreover, "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."

[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 submitted the following reasons for the delay in completing her Application:

- a) She received a copy of the General Division decision on May 31, 2016, because she had moved.
- b) She was scheduled for a hearing in January 2016 and was admitted to hospital at this time.
- c) Her original Application was sent to the wrong division of the Tribunal.

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

- a) Her medical information states that she is unfit to return to work.
- b) Since her 2011 heart attack, she has been in and out of hospital.

- c) Her doctor completed forms for her disability.
- d) She is currently in chronic kidney failure, may be getting a kidney transplant and has other continuing health problems.

## **ANALYSIS**

### **Late Application**

[12] The Applicant was late in filing her Application with the Appeal Division. She has provided reasons for her delay. However, her reasons do not accord with the situation. She filed an incomplete application on May 26, 2016, but she states that she received the General Division decision on May 31, 2016. She also refers to the General Division hearing being scheduled in January and her hospitalization in January 2016, but the General Division had changed its form of hearing to a decision on the record and dates for additional documents/submissions were in November and December 2015. She also states that her “original application” went to the wrong division of the Tribunal, but the Tribunal’s records are not received and date-stamped by division, and there is no indication in the file that any delay resulted from the process of receipt of her Application.

[13] The Applicant has not provided a reasonable explanation for the delay between July 5, 2016 (the extended date to complete the Application), and December 16, 2016 (the date the Application was completed).

[14] However, in *Canada (Attorney General) v. Larkman*, 2012 FCA 204, the Federal Court of Appeal held that when determining whether to allow an extension of time, the overriding consideration is that the interests of justice be served.

[15] Therefore, I will consider whether the appeal has a reasonable chance of success.

## **Reasonable Chance of Success**

[16] The Applicant first applied for a disability pension in August 2012, but the Respondent refused that application.

[17] The Applicant applied a second time for a disability pension in February 2013. This is the CPP application that is the subject of this appeal. It was denied by the Respondent in a decision letter dated May 8, 2013, on the basis that the Applicant did not have a disability that was both severe and prolonged. Her Minimum Qualifying Period (MQP), as calculated by the Respondent, ended on December 31, 2013.

[18] The Applicant requested a reconsideration of this decision on August 28, 2013, which was outside of the 90-day time limit. This request did not contain an explanation for the Applicant's delay.

[19] The Respondent sent a letter, dated November 18, 2013, requesting further explanation, within 30 days, for the Applicant's delay in requesting a reconsideration decision. There was no reply within the 30-day time frame stated in that letter, and the Respondent refused her late reconsideration request by letter dated January 8, 2014.

[20] The Applicant appealed that decision to the Tribunal's General Division.

[21] The General Division had initially decided to proceed by way of a videoconference hearing scheduled in January 2016, but the General Division member changed this and advised the Applicant in October 2015 of the intention to make a decision on the basis of the documents and submissions on file. The parties were given until November 13, 2015, to file additional documents or submissions and until December 14, 2015, to respond to any documents that were filed. No additional documents or submissions were filed.

[22] The issue before the General Division was whether the Respondent exercised its discretion judicially in refusing to allow a longer period of time for the Applicant to request a reconsideration of the May 2013 decision denying her a disability pension.

[23] The General Division reviewed the Applicant's evidence and the parties' submissions. It rendered a written decision that is understandable, sufficiently detailed and logically coherent.

The General Division weighed the evidence and gave reasons for its analysis of the evidence and the law. These are the proper roles of the General Division.

[24] The Applicant argues that she provided medical documents to the Respondent (and to the Tribunal) that show she is unfit to return to work.

[25] The issue before the General Division was not whether the Applicant had a severe and prolonged disability on or before her MQP. It was whether the Respondent exercised its discretion judiciously when it refused to extend the time for requesting reconsideration under the CPP.

[26] The General Division referred to the jurisprudence applicable to the Respondent's exercise of discretion. It correctly stated that the Tribunal has no authority to interfere with the Respondent's discretionary power unless it can be shown that the discretion was exercised in a non-judicial manner or that the decision-maker acted in a perverse or capricious manner.

[27] The General Division applied *Canada (Attorney General) v. Purcell*, [1996] 1 FCR 644, 1995 CanLII 3558 (FCA), and concluded that the Respondent had exercised its discretion judiciously.

[28] The Applicant has not articulated any error on the General Division's part as described in subsection 58(1) of the DESD Act.

[29] If leave to appeal is granted, then the Appeal Division's role 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. The Appeal Division's role is not 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.

[30] 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.

[31] I am satisfied that the appeal has no reasonable chance of success.

## **CONCLUSION**

[32] The Application is refused.

Shu-Tai Cheng  
Member, Appeal Division