



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. C. v. Minister of Employment and Social Development*, 2017 SSTADIS 315

Tribunal File Number: AD-16-1289

BETWEEN:

B. C.

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: July 4, 2017

REASONS AND DECISION

INTRODUCTION

[1] On September 12, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Applicant had appealed a decision of the Respondent—denying a disability pension under the *Canada Pension Plan* (CPP)—beyond the 90-day limit set out in paragraph 52(1)(b) of the *Department of Employment and Social Development Act* (DESD Act). The General Division refused an extension of time to appeal.

[2] The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on November 14, 2016, within the 90-day appeal period.

[3] The Applicant filed an application for CPP benefits in October 2012. The Respondent denied the application initially and on reconsideration. The date of the reconsideration decision was April 23, 2013. The time limit for filing an appeal of the reconsideration decision was 90 days. The General Division found that an appeal would have had to be filed on or before August 1, 2013, to have been within the appeal period.

[4] The Applicant filed an appeal with the General Division on June 2, 2016.

[5] The General Division considered the Applicant's explanation for the delay and found that he did not provide a reasonable explanation, that he did not have a continuing intention to pursue the appeal and that he filed his appeal more than one year after the reconsideration decision had been issued. On this basis, the General Division refused 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 decision should not be based on just the time line, but should also be based on his doctor’s opinion.
- b) His appeal was filed late because of “ignorance and illness.”
- c) He cannot do anything because of his pain and his many health-related limitations.
- d) He cannot work.

ANALYSIS

[11] The situation before the General Division was the Applicant's late appeal of a reconsideration decision that the Respondent had rendered in April 2013.

[12] The General Division determined that the Applicant's appeal was filed more than one year after the appeal period (90 days) had expired. It found that it took the Applicant 1,125 days to file his appeal.

[13] I note that because the Applicant filed his appeal with the General Division more than one year after the reconsideration had been communicated to him, the General Division did not have any discretion to grant an extension of time.

[14] Subsection 52(2) of the DESD Act states that the General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought beyond a one-year delay.

[15] The Application before the Appeal Division essentially argues that the General Division decision was unfair and did not take the medical evidence into consideration.

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

[17] The General Division found that an appeal would have had to be filed on or before August 1, 2013, to have been within the appeal period and that the Applicant took 1,125 days to file his appeal. This exceeded the one-year limitation by almost three years.

[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, in coming to its decision, may have made in a perverse or capricious manner or without regard for the material before it.

[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 determinative of this matter, and that the Tribunal does not have the discretion to grant an extension of time exceeding one year in this case.

[20] The Tribunal's Appeal Division also cannot extend a filing deadline 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.

CONCLUSION

[22] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division