



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *P. L. v. Minister of Employment and Social Development*, 2017 SSTADIS 385

Tribunal File Number: AD-16-1186

BETWEEN:

**P. L.**

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: July 31, 2017

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] On September 7, 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)* - "well beyond the one-year absolute limit set out in paragraph 52(2)" 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 October 7, 2016, within the 90-day limit.

[3] The Applicant filed an application for CPP benefits in 2012. The Respondent denied the application initially and on reconsideration. The reconsideration decision was dated October 3, 2012. The time limit for filing an appeal of the reconsideration decision was 90 days, which was on or before January 13, 2013. After this date, in order to file an appeal, the Applicant would need to request and to be granted an extension of time.

[4] The Applicant filed an incomplete appeal to the General Division on June 30, 2016 and completed the appeal subsequently. The General Division deemed the appeal to have been complete on June 30, 2016.

[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] Does the appeal have 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 “leave 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) After the Respondent denied her CPP application, she focused on getting better;
- b) She did not know that she had to appeal the reconsideration decision within 90 days, because she was still going through treatment;
- c) She tried retraining but was unsuccessful;
- d) She was misinformed by the Respondent’s staff; and
- e) She appealed after she had tried to get better and to get retrained, and both had been unsuccessful.

## **ANALYSIS**

[11] The situation before the General Division was the Applicant’s late appeal from a reconsideration decision which the Respondent rendered in October 2012.

[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 (the General Division) did not have any discretion to consider the Applicant's explanations for her delay in filing the appeal. The General Division cited legislation and jurisprudence, and it determined that the appeal was filed beyond the one year "absolute limitation" on extensions of time.

[13] The Application before the Appeal Division essentially argues that the General Division decision was unfair and did not take into consideration why the appeal was filed late.

[14] Section 52 of the DESD Act, which came into force on April 1, 2013, states:

Appeal — time limit

- 52 (1) An appeal of a decision must be brought to the General Division in the prescribed form and manner and within,
  - (a) in the case of a decision made under the *Employment Insurance Act*, 30 days after the day on which it is communicated to the appellant; and
  - (b) in any other case, 90 days after the day on which the decision is communicated to the appellant.
- (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.

[15] The General Division referred to subsection 52(2) of the DESD Act. It found that the Applicant had until January 13, 2013 to file her appeal from the reconsideration decision to be within the 90-day limit and that October 15, 2013, was one year after the day on which the reconsideration decision was communicated to her. She filed the appeal on June 30, 2016. This exceeded the one year limitation date by years.

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

[17] Nevertheless, I note that the General Division member characterized the one-year time limit set out in subsection 52(2) of the DESD Act as "absolute" (at paragraphs 1, 8 and 13 of the

decision). I do not agree. The Appeal Division has previously determined that subsection 52(2) is not necessarily “absolute” in that there are circumstances when the one-year limitation does not apply.

[18] Prior to April 1, 2013, there was a 90-day time limit in which to appeal, but neither the CPP nor the DESD Act placed any restriction on when a request for an extension of time could be brought. Subsection 82(1) of the CPP then read:

A party who is dissatisfied with a decision of the Minister made under section 81 or subsection 84(2), or a person who is dissatisfied with a decision of the Minister made under subsection 27.1(2) of the *Old Age Security Act*, or, subject to the regulations, any person on their behalf, may appeal the decision to a Review Tribunal in writing within 90 days, or any longer period that the Commissioner of Review Tribunals may, either before or after the expiration of those 90 days, allow, after the day on which the party was notified in the prescribed manner of the decision or the person was notified in writing of the Minister’s decision and of the reasons for it.

[19] An applicant prior to April 1, 2013, did not face a one-year limitation within which a request for an extension of time had to have been made. If an extension of time request exceeded one year, the Office of the Commissioner of Review Tribunals made a decision to grant or refuse it based on the specific circumstances and in accordance with the jurisprudence at that time.

[20] The one-year limitation came into effect on April 1, 2013 when the DESD Act came into force.

[21] There is a general rule of statutory interpretation that new legislation is not to be interpreted as having retrospective application. In *Tabingo v. Canada (Citizenship and Immigration)*, 2013 FC 377, the Federal Court stated that legislation may not be interpreted in a manner that removes existing rights or entitlements unless Parliament’s intention to do so is clear. If the plain and obvious meaning of the legislation requires that it be retrospective and interfere with vested rights, it is valid, regardless of any perceived unfairness. As well, subsection 44(c) of the *Interpretation Act* states that where a former enactment is repealed and replaced by a new enactment, proceedings commenced under the former enactment are to be continued in conformity with the new enactment, insofar as it is possible to do so consistently with the new enactment.

[22] There were transitional provisions drafted into the *Jobs, Growth and Long-term Prosperity Act* to cover undecided appeals and applications that were filed with the Tribunal's predecessor bodies and needed to be transferred to and resolved by the Tribunal. These provisions covered the period between April 1, 2013 and April 1, 2014 (the transitional period). Once these provisions were no longer needed, they were repealed.

[23] This appeal was not filed with the Tribunal's predecessor bodies. It was filed in June 2016, more than three years after this Tribunal began operations.

[24] In situations where a reconsideration decision was issued before April 1, 2013 and an appeal was filed with the Tribunal before April 1, 2014 (i.e. during the transitional period), the Appeal Division has previously determined that the one-year time limit in subsection 52(2) does not necessarily apply. See for example *Minister of Employment and Social Development v. J.P.*, 2016 SSTADIS 509 and *Minister of Employment and Social Development v. S.D.*, AD-16-239, 2017-01-27 (not yet published).

[25] The current situation, however, pertains to a reconsideration decision that was issued before April 1, 2013 and an appeal that was filed with the Tribunal after April 1, 2014. The Appeal Division cases referred to in paragraph 24, above, did not have the same fact situation (i.e. timeline) as in the present matter.

[26] For appeals filed with the Tribunal after April 1, 2014, subsection 52(2) of the DESD Act applies, and the General Division may not allow further time within which an appeal may be brought.

[27] The General Division did not err in law in making its decision or fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction. The Applicant has not identified any errors in law or any erroneous findings of fact which 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.

[28] In the specific circumstances of this case, the General Division does not have the discretion to grant an extension of time. The Appeal Division also cannot extend the appeal period beyond the limitation period set by subsection 52(2) the DESD Act.

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

## **CONCLUSION**

[30] The Application is refused.

Shu-Tai Cheng  
Member, Appeal Division