



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. T. v. Minister of Employment and Social Development*, 2017 SSTADIS 460

Tribunal File Number: AD-17-306

BETWEEN:

**L. T.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Decision on Request for Extension of Time by: Kate Sellar

Date of Decision: September 20, 2017

## **REASONS AND DECISION**

[1] On March 7, 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 the Applicant. The General Division found that the medical evidence strongly suggested that the Applicant's disability became severe on June 14, 2012, when she had a serious workplace accident. However, in order to receive a disability pension, the Applicant must have had a severe disability on or before her minimum qualifying period date of December 31, 2008.

[2] On April 5, 2017, the Tribunal received an incomplete application for leave to appeal. On April 25, 2017, that application for leave to appeal to the Tribunal's Appeal Division was complete.

### **ISSUE**

[3] The Tribunal must decide whether an extension of time to file the application for leave to appeal should be granted, and if so, whether the appeal has a reasonable chance of success.

### **THE LAW**

#### **Extension of Time**

[4] Subsection 57(1)(b) of the *Department of Employment and Social Development Act* (DESDA) states that an application for leave to appeal must be made to the Appeal Division within 90 days after the day on which the decision was communicated to the applicant.

[5] Subsection 57(2) of the DESDA states that the Appeal Division may allow further time to make an application for leave to appeal. However, an applicant may not, in any case, make an application more than a year after the day on which the decision is communicated to the applicant.

## **Leave to Appeal**

[6] According to subsections 56(1) and 58(3) of the DESDA, an appeal may be brought only if leave to appeal is granted and the Appeal Division must either grant or refuse leave to appeal.

[4] 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.

## **SUBMISSIONS**

### **Extension of Time**

[5] On April 5, 2017, the Applicant submitted that she was told by an online telephone agent that she had one year to appeal. She also indicated that she had medical issues to deal with (chronic obstructive pulmonary disease and multiple allergies to drugs), and that a family member had died. She stated that she had no one to assist her, but she now has a representative.

[6] In the application for leave to appeal to the Appeal Division dated April 25, 2017, the Applicant indicated that she had received the General Division's decision on March 8, 2016.

### **Leave to Appeal/New Evidence**

[7] The Applicant seeks leave to appeal because she has new medical information that she believes could be an asset to her application, and because her conditions have worsened.

[8] The Applicant seeks to rely on a February 24, 2017, medical report from Dr. Paul Woolfrey, based on a medical visit on February 2, 2017. The report indicates that prior to February 2, 2017, he last saw the Applicant in May 2016.

## **ANALYSIS**

### **Extension of Time**

[9] The Applicant received the General Division's decision on March 8, 2016. She filed an incomplete application for leave to appeal on April 5, 2017, which was completed by April 25,

2017. The application requesting leave to appeal was filed more than one year after the day on which the decision was communicated to the Applicant.

[10] The DESDA is clear: subsection 57(2) states that in no case may an application be made more than a year after the communication of the General Division's decision. The Appeal Division has no discretion to extend the time past that one-year limit for the Applicant.

### **Leave to Appeal/New Evidence**

[11] The Appeal Division can grant leave to appeal only if there is a ground of appeal under subsection 58(1) that has a reasonable chance of success. Adducing new facts is not a ground of appeal; see: *Belo-Alves v. Canada (Attorney General)*, 2014 FC 1100, para. 108. Where the Appeal Division grants leave to appeal, it does not provide new hearings on the merits (*de novo* hearings), in which Applicants are expected to present all their evidence for the Appeal Division to weigh and consider. The general rule is that the evidence the Appeal Division uses to make its decision is the same evidence that was available to the General Division; see *Parchment v. Canada (Attorney General)*, 2017 FC 354.

[12] Even if the Appeal Division granted an extension of time to the Applicant, Dr. Woolfrey's evidence is new. That evidence does not fall under an exception to the general rule against considering new evidence on appeal. The application for leave to appeal, even if it were filed on time, would have no reasonable chance of success.

### **CONCLUSION**

[13] The request for an extension of time to apply for leave to appeal is refused.

Kate Sellar  
Member, Appeal Division