



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. P. v. Minister of Employment and Social Development*, 2017 SSTADIS 549

Tribunal File Number: AD-17-227

BETWEEN:

**B. P.**

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: October 24, 2017

## REASONS AND DECISION

### DECISION

[1] The application for leave to appeal (Application) is refused.

### OVERVIEW

[2] The Applicant, B. P., seeks a disability pension under the *Canada Pension Plan* (CPP). The Respondent, the Minister of Employment and Social Development, denied her request, because while the Applicant had certain restrictions due to her medical condition, the information did not show that those limitations prevented her from doing some type of work.

[3] The Applicant maintains that depression, anxiety, bipolar disorder and plantar fasciitis prevent her from working. She last worked regularly in 2014 and, since then, has attempted to work without success.

[4] The Applicant appealed the Respondent's denial of a CPP disability pension to the General Division of the Social Security Tribunal of Canada (Tribunal). The General Division found that the Applicant had filed her appeal more than one year after she had received the Respondent's reconsideration decision and refused to grant an extension of time. The Applicant filed an Application to the Appeal Division.

[5] I find that this appeal does not have a reasonable chance of success, because the law does not permit the Tribunal to extend the time to bring an appeal past the one-year period.

### ISSUES

[6] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?<sup>1</sup>

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<sup>1</sup> *Osaj v. Canada (Attorney General)*, 2016 FC 115 at paragraph 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208 at paragraph 36; *Glover v. Canada (Attorney General)*, 2017 FC 391 at paragraph 22.

[7] More specifically, is there a reasonable argument that the General Division based its decision on an error when it found that the Applicant filed her appeal more than one year after she received the reconsideration decision she sought to appeal?

## **ANALYSIS**

[8] An appeal to the Appeal Division may be brought only if leave to appeal is granted and the Appeal Division must either grant or refuse leave to appeal.<sup>2</sup>

[9] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error.<sup>4</sup> The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

[10] The Applicant's primary ground of appeal is that the General Division made an important error regarding the facts contained in the appeal file. She submits that her condition is severe and prolonged and that she has attempted to return to work but has been unsuccessful.

### **Late Appeal**

[11] The Applicant seeks to appeal a reconsideration decision dated August 13, 2015. The Applicant received this decision on August 20, 2015.<sup>5</sup> She filed an appeal of this decision on October 4, 2016,<sup>6</sup> one year, one month and 14 days after she received the decision.

[12] The time limit for the Applicant to file an appeal was 90 days after the date she received the decision.<sup>7</sup> The Applicant needed an extension of time, because she filed this appeal long after the 90-day appeal period.

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<sup>2</sup> *Department of Employment and Social Development Act* (DESD Act) at subsections 56(1) and 58(3).

<sup>3</sup> DESD Act at subsection 58(1).

<sup>4</sup> DESD Act at subsection 58(2).

<sup>5</sup> Applicant's Notice of Appeal at box 2A "Date you received the Reconsideration Decision."

<sup>6</sup> *Ibid*, date stamped received by the Tribunal "Oct 04 2016."

<sup>7</sup> DESD Act at paragraph 52(1)(b).

[13] Unfortunately, the law does not allow the Tribunal to extend the time to appeal by more than one year.<sup>8</sup> For this reason, the General Division refused to grant an extension of time.

[14] The Applicant submits that the General Division made a serious error in its findings of fact by failing to conclude that she suffered from a severe and prolonged disability. She does not dispute the findings of fact relating to the date she received the reconsideration decision and the date that she filed an appeal with the General Division.

[15] The Applicant filed her appeal more than one year after she received the decision she seeks to appeal.

[16] Neither the Appeal Division nor the General Division of the Tribunal can vary the legal provisions in the DESD Act. The General Division could not grant an extension of time. It did not commit a reviewable error in arriving at this conclusion. Therefore, there is no reasonable argument upon which an appeal might succeed.

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

## **CONCLUSION**

[18] The Application is refused.

Shu-Tai Cheng  
Member, Appeal Division

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<sup>8</sup> DESD Act at subsection 52(2).