



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. L. v. Minister of Employment and Social Development*, 2017 SSTADIS 564

Tribunal File Number: AD-17-238

BETWEEN:

T. L.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Decision on Request for Extension of Time by: Neil Nawaz

Date of Decision: October 31, 2017

DECISION AND REASONS

DECISION

[1] Extension of time and leave to appeal are refused.

OVERVIEW

[2] The Applicant worked as a school custodian until January 2013, when she took leave because of anxiety and depression. The Respondent refused her application for disability benefits under the *Canada Pension Plan* (CPP), having determined that her disability was not “severe” during the minimum qualifying period (MQP), which ended on December 31, 2015.

[3] The Applicant appealed this decision to the General Division of the Social Security Tribunal of Canada (Tribunal). The General Division scheduled a hearing by teleconference, although neither the Applicant nor the Respondent appeared at the appointed date and time. Having satisfied itself that the parties had received notice of the hearing, the General Division decided to proceed by way of a review of the existing documentary record. In a decision dated April 7, 2016, the General Division dismissed the appeal, finding insufficient medical evidence of the Applicant’s treatment and progress after 2013.

[4] On March 17, 2017, after the statutory 90-day deadline, the Applicant submitted a request for leave to appeal to the Tribunal’s Appeal Division, alleging that the General Division had failed to adequately consider the available medical evidence. In a letter dated September 15, 2017, and sent to her last known address, the Appeal Division advised the Applicant that her application put forward insufficient grounds of appeal and allowed her a reasonable period of time in which to make further submissions. To date, the Applicant has not responded to this letter.

[5] I have reviewed the record and concluded that, since the Applicant’s grounds of appeal would have no reasonable chance of success, this is not a suitable case in which to permit an extension of time.

ISSUES

- [6] There are three related issues before me:
- (a) Was the Applicant's application requesting leave to appeal filed late?
 - (b) If so, should the Applicant receive an extension of time in which to file her application for leave to appeal?
 - (c) Does the Applicant have an arguable case that the General Division erred in disregarding the medical evidence?

ANALYSIS

(a) Was the Applicant's request for leave to appeal filed late?

[7] Pursuant to paragraph 57(1)(b) of the *Department of Employment and Social Development Act* (DESDA), 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. Under subsection 57(2), the Appeal Division may allow further time within which an application for leave to appeal 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 applicant.

[8] I find that the application requesting leave to appeal was filed after the 90-day limit. The record indicates that the General Division issued its decision on April 7, 2016, and that the Tribunal received the Applicant's request for leave to appeal to the Appeal Division on March 17, 2017—more than 11 months after the General Division's decision was mailed, and well after the filing deadline set out in the DESDA.

(b) Should the Applicant receive an extension of time to file her application for leave?

[9] In *Canada v. Gattellaro*¹, the Federal Court set out four factors to consider in deciding whether to allow further time to appeal:

- (i) Whether the applicant demonstrates a continuing intention to pursue the appeal;

¹ *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883.

- (ii) Whether there is a reasonable explanation for the delay;
- (iii) Whether allowing the extension would cause prejudice to the other party; and
- (iv) Whether the matter discloses an arguable case.

[10] The weight to be given to each of the *Gattellaro* factors may differ from case to case, and other factors may be relevant. However, the overriding consideration must be that the interests of justice be served².

(i) *Continuing intention to pursue the appeal*

[11] Although the Applicant did not file a complete application for leave to appeal until nearly a year after the expiry of the statutory limitation, I am willing to assume that she had a continuing intention to pursue the appeal, but was waylaid by her mental health issues.

(ii) *Reasonable explanation for the delay*

[12] The Applicant apologized for not appearing at the hearing before the General Division, explaining that she got the date and time mixed up and missed a call from the Tribunal. She asked for an “extension or another chance.”

[13] Although the Applicant does not offer a specific reason for the lengthy delay in filing her request for appeal, I am, again, willing to give the Applicant the benefit of the doubt on this question and assume that symptoms commonly associated with depression and anxiety blocked her initiative in pursuing the next step in the appeals process.

(iii) *Prejudice to the other party*

[14] It is unlikely that extending the Applicant’s time to appeal would prejudice the Respondent’s interests, given the relatively short period of time that has elapsed following the expiry of the statutory deadline. I do not believe that the Respondent’s ability to respond, given its resources, would be unduly affected by allowing the extension of time to appeal.

(iv) *Arguable case*

[15] For reasons that follow, I find that the Applicant’s case would have no reasonable chance of success on appeal.

² *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

(c) Does the Applicant have an arguable case that the General Division erred?

[16] The Applicant submits that not all the facts were considered in her appeal. She maintains that she was unable to work or leave her house because of severe depression, anxiety and panic attacks. She enclosed more than 30 pages of medical records, among them a report from Dr. Momi, her psychiatrist and counsellor.

[17] There are only three grounds of appeal to the Appeal Division: The General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material. An appeal may be brought only if the Appeal Division first grants leave to appeal³. Leave to appeal will be granted if the Appeal Division is satisfied that the appeal has a reasonable chance of success⁴. As the Federal Court of Appeal has determined, a reasonable chance of success is akin to an arguable case at law⁵.

[18] In essence, the Applicant's submissions recapitulate arguments that were already presented to the General Division. Unfortunately, the Appeal Division has no mandate to rehear disability claims on their merits. While applicants are not required to prove the grounds of appeal at the leave to appeal stage, they must set out some rational basis for their submissions that falls into the grounds of appeal enumerated in subsection 58(1) of the DESDA. It is not sufficient for an applicant to merely state their disagreement with the General Division's decision, nor is it enough to express their continued conviction that their health conditions render them disabled within the meaning of the CPP.

[19] In the absence of a specific allegation of error, I must find the Applicant's claimed grounds of appeal to be so broad that they amount to a request to retry the entire claim. If she is requesting that I reconsider and reassess the evidence and substitute my decision for the General Division's in her favour, I am unable to do this. My authority permits me to determine only whether any of the Applicant's reasons for appealing fall within the specified grounds of appeal and whether any of them have a reasonable chance of success.

³ *Department of Employment and Social Development Act* (DESDA) at subsections 56(1) and 58(3).

⁴ DESDA at subsection 58(1).

⁵ *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[20] The Applicant also submitted a number of medical reports with her application for leave—all of them, it appears, prepared after the General Division had issued its decision. I am unable to consider any of them, given the constraints of the DESDA, which confers no authority on the Appeal Division to assess the merits of disability claims. Once a hearing has concluded, there is a very limited basis upon which any new or additional information can be raised. An applicant could consider making an application to the General Division to rescind or amend its decision. However, an applicant would need to comply with the requirements set out in section 66 of the DESDA and sections 45 and 46 of the *Social Security Tribunal Regulations*. Not only are there strict deadlines and requirements that must be met to succeed in an application to rescind or amend, but an applicant would also need to demonstrate that any new facts are material and that they could not have been discovered at the time of the hearing with the exercise of reasonable diligence.

CONCLUSION

[21] Having weighed the above factors, I have determined that this is not an appropriate case to allow an extension of time to appeal beyond the 90-day limitation. I found the Applicant's explanation for the delay in filing her request for leave reasonable and assumed that she had a continuing intention to pursue her appeal. I also thought it unlikely that the Respondent's interests would be prejudiced by extending time. However, I could find no arguable case on appeal, and it was this last factor that was decisive; I see no point in advancing this application to a full appeal that is doomed to fail.

[22] In consideration of the *Gattellaro* factors and in the interests of justice, I am refusing the Applicant's request to extend the time to appeal.



Member, Appeal Division