Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *P. A. v. Minister of Employment and Social Development,* 2017 SSTADIS 554

Tribunal File Number: AD-16-1342

BETWEEN:

P. A.

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: ~~October 25, 2017~~

DATE OF CORRIGENDUM: October 30, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] On August 23, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) refused the Applicant's application to rescind or amend a decision of the General Decision rendered on June 18, 2016.

[2] The Applicant filed an incomplete application for leave to appeal (Application) with the Tribunal's Appeal Division on November 18, 2016. He completed the Application on December 20, 2016, and, therefore, it was not filed within the time limit for appeal to the Appeal Division.

ISSUES

[3] In order for the Application to be considered, an extension of time to apply for leave to appeal must be granted.

[4] In order to succeed on this Application, the Applicant must show that the appeal has a reasonable chance of success.

THE LAW

[5] Pursuant to subsections 57(1) and (2) of the *Department of Employment and Social Development Act* (DESD Act), 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 appellant. Moreover, "The Appeal Division may allow further time within which an application for leave 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 appellant."

[6] 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."

[7] 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."

[8] 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

[9] The Applicant's reasons for appeal can be summarized as follows:

a) The General Division's decision that no further hearing was required is a summary dismissal under the DESD Act.

b) There is an absence of evidence in his file, in particular, the 1979 medical adjudicator's assessment.

c) He made a request under section 33 of the DESD Act.

d) The Respondent made no submissions.

e) The *Canadian Charter of Rights and Freedoms* protects the right of the physically and mentally disabled against cruel and unusual punishment.

f) The General Division, therefore, refused to exercise its discretion, and based its decision on an error of law and on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

ANALYSIS

Late Application

[10] The Applicant was late in filing his Application with the Appeal Division.

[11] The Applicant has not provided an explanation for the delay between the end of the appeal period and December 20, 2016 (the date on which the Application was completed).

[12] However, in *Canada (Attorney General) v. Larkman*, 2012 FCA 204, the Federal Court of Appeal held that, when determining whether to allow an extension of time, the overriding consideration is that the interests of justice be served.

[13] Therefore, I will consider whether the appeal has a reasonable chance of success.

Reasonable Chance of Success

[14] The Applicant applied for a disability pension in April 1997, but the Respondent refused that application and maintained the initial decision on reconsideration. The Applicant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals (OCRT) and his appeal was dismissed. His appeal was subsequently allowed, on October 3, 2003, on the basis of new facts and he was granted the maximum retroactive payment of benefits with a date of onset of January 1996, which was 15 months prior to his date of application. Since October 3, 2003, the Applicant has appealed the calculation of payment to the OCRT unsuccessfully; appealed the OCRT decision to the Pension Appeals Board (PAB) unsuccessfully; appealed the PAB decision to the Federal Court of Appeal (FCA) unsuccessfully; sought leave to appeal the FCA decision to the Supreme Court of Canada unsuccessfully; applied to the Tribunal's General Division in May 2014, to rescind or amend, unsuccessfully; and applied to rescind or amend the General Division decision (dismissing the application to amend or rescind) of June 18, 2015.

[15] The May 2014 application to rescind or amend the 2003 OCRT decision was based on purported "new evidence" in the form of a letter from the Department of Veterans Affairs dated June 11, 2010, and a medical report submitted to the Department of Veterans Affairs dated May 20, 2010. The June 2016 application to rescind or amend the June 2015 General Division

decision was based on purported "new evidence" in the form of a letter from the Department of Veterans Affairs dated June 11, 2010, and a medical report submitted to the Department of Veterans Affairs dated May 20, 2010, the same two documents that had been submitted and reviewed in the May 2014 application (which resulted in the June 2015 decision).

[16] The Applicant seeks leave to appeal the General Division's decision on his second application to rescind or amend.

[17] 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?[1]

[18] The General Division decided to proceed on the basis of the documents and submissions filed. The Applicant argues that this is an error of law and that the General Division summarily dismissed his application.

Summary Dismissal

[19] An application to rescind or amend is referred to in the DESD Act at section 66. It is an application and not an appeal. Subsection 53(3) of the DESD Act states that the "General Division must summarily dismiss an appeal, if it is satisfied that it has no reasonable chance of success" (emphasis added). As the Applicant's application was pursuant to section 66 of the DESD Act, subsection 53(3) of the DESD Act does not apply.

[20] Therefore, the argument that the General Division summarily dismissed the Applicant's section 66 application has no reasonable chance of success on appeal.

Error of Law

[21] The Applicant submits that the General Division erred in law by deciding to proceed on the basis of the documents and submissions filed rather than holding a hearing. The Application sets out other arguments he would make at a hearing.

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[1] *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 363 at paragraph 22.

[22] Sections 45 to 49 of the *Social Security Tribunal Regulations* (SST Regulations) apply to an application to rescind or amend a decision of the Tribunal. The Applicant filed the application form and supporting material, as required by section 46 of the SST Regulations, and the parties had time to respond with further documents or submissions, as set out in section 47.

[23] The SST Regulations then required the General Division to make a decision on the application "without delay" or, if it determined that a further hearing was required, to send a notice of hearing to the parties: section 48.

[24] The General Division made a decision on the application without holding a hearing, because it determined that one was not necessary. This decision was in accordance with the SST Regulations and did not constitute an error of law.

[25] If the Applicant had other arguments that he wished to make on his application, it was incumbent on him to do so in his application form and supporting materials rather than to assume that he would have an opportunity in the future at a hearing.

Multiple Applications to Rescind or Amend

[26] There is a limit to the number of applications to rescind or amend that an applicant is permitted to make. Subsection 66(3) of the DESD Act states that "each person who is subject of a decision may make only one application to rescind or amend that decision."

[27] In the present case, the Applicant applied to the Tribunal's General Division, in May 2014, to rescind or amend an OCRT decision pertaining to his disability pension application of April 1997. The General Division dismissed this application in June 2015. The Applicant ~~did not seek~~ sought leave to appeal that decision to the Appeal Division and leave to appeal was refused.

[28] The Applicant applied to rescind or amend the June 2015 General Division decision, relying on the same documents that had been submitted and reviewed in the June 2015 decision. This second application to rescind or amend was refused by the General Decision in a decision rendered on June 18, 2016. It is the second application that is the subject of this Application.

[29] This sequence may have been a creative way for the Applicant to avoid the limit of one application to rescind or amend a decision. However, it would be a ridiculous situation if an

applicant is able to make application after application by simply applying to rescind or amend the last decision (even where the last decision dealt with the same subject as the previous decision). The limit of one application to rescind or amend would be meaningless.

[30] It is a well-established principle of statutory interpretation that the legislature does not intend to produce absurd consequences.[2] An interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment.

[31] Interpreting subsection 66(3) of the DESD Act as permitting an unlimited number of applications to rescind or amend a decision would be an absurd consequence. This result is incompatible with a legislative provision that limits the number of applications to rescind or amend that an applicant is permitted to make.

[32] The Applicant's second application to rescind or amend is essentially the same as his first application. The Applicant seeks to rescind or amend the June 2016 General Division decision based on the same purported "new evidence" as was on the record of the June 2015 decision. There is no reasonable argument of an error of law upon which this appeal might succeed.

CONCLUSION

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

[34] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division

[2] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at paragraph 27.