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

Citation: *M. O. v. Minister of Employment and Social Development*, 2017 SSTADIS 582

Tribunal File Number: AD-17-281

BETWEEN:

M. O.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Extension of Time Decision by: Kate Sellar

Date of Decision: October 31, 2017

REASONS AND DECISION

INTRODUCTION

[1] On January 13, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* (CPP) was not payable.

[2] The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on April 3, 2017. On April 5, 2017, the Tribunal wrote to the Applicant requesting further information as the Application was incomplete. The Tribunal provided the Applicant until May 6, 2017, to complete the Application. The Applicant provided further information to the Tribunal dated May 1, 2017, which the Tribunal received on May 3, 2017. The Tribunal wrote to the Applicant again on May 4, 2017, indicating that the Application was still incomplete because the Applicant had not yet signed a required declaration. On May 16, 2017, the Applicant provided the required declaration and the Tribunal replied on the same day indicating that the Application was complete but late, and requesting reasons from the Applicant about why it was late. On June 5, 2017, the Applicant provided those reasons in writing.

ISSUE

[3] The Appeal Division must decide whether to extend the time to bring the Application and, if the extension is granted, it must also decide whether the appeal has a reasonable chance of success for the purposes of granting leave to appeal.

THE LAW

Extension of Time

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

[5] According to s. 57(2) of the DESDA, the Appeal Division may allow further time for an applicant to request leave to appeal, but in no case can an application be made more than one year after the day on which the Tribunal communicates its decision to the applicant.

[6] The Appeal Division may therefore grant an extension of time for an application that is submitted after the 90-day limit but before the one-year limit outlined in the DESDA. There are four criteria that the Appeal Division must take into account in deciding whether to grant an extension of time [see *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 833]:

- Whether there was a continuing intention to pursue the application or appeal;
- Whether the matter discloses an arguable case;
- Whether there is a reasonable explanation for the delay; and
- Whether there is prejudice to the other party in allowing the extension.

[7] The weight to be given to each of the *Gattellaro* factors may differ in each case, and in some cases, different factors will be relevant. The overriding consideration is that the interests of justice be served [see *Canada (Attorney General) v. Larkman*, 2012 FCA 204].

Leave to Appeal

[8] According to ss. 56(1) and 58(3) of the DESDA, 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.

[9] Subsection 58(2) of the DESDA provides that the Appeal Division refuses leave to appeal if it is satisfied that the appeal has no reasonable chance of success. An arguable case at law is a case with a reasonable chance of success [see *Fancy v. Canada (Attorney General)*, 2010 FCA 63].

[10] According to s. 58(1) of the DESDA, the following are the only grounds of appeal:

(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

[11] The Applicant submits that her initial submission (although incomplete) was completed within the 90-day limit. Her response to the Tribunal's request for further information was within the additional 30-day grace period provided by the Tribunal. However, the Applicant provided the signed declaration on May 16, 2017, which was outside the 90-day limit but within the one- year limit.

[12] The Applicant submits that the delay was incurred as a result of her disability. She indicates that her mailbox is 500 metres away from her home. As such, she relies on neighbours and friends to pick up her mail when the opportunity arises (not every day). In addition, she indicates that when mailing or faxing the Tribunal, she relies on the generosity of those who assist her as she does not drive and the closest post office is 15 kilometres away.

[13] The Applicant submits that the General Division erred in law under s. 58(1)(*b*) of the DESDA. The Applicant argues that she has a severe and prolonged disability. She argues, *inter alia*, that the Tribunal applied the wrong test for disability. She states that she is in receipt of a government benefit for people with disabilities that provides her with access to medication, so she must be disabled for the purpose of the CPP disability pension as well.

ANALYSIS

[14] The Application is late because it was not completed until the Tribunal received the signed declaration, and the signed declaration was received after the 90-day limit.

[15] Applicant is unrepresented and has demonstrated a continuing intention to pursue the Application. She provided her initial submission within the 90-day limit, provided additional information for the Tribunal within the 30-day grace period, and then was over the Tribunal's grace period by about 10 days in providing her signed declaration. Given the brief length of the delay and the information she provided in terms of the disability-related barriers she experiences in terms of accessing mail and accessing a ride to send materials to the Tribunal, she pursued the appeal as diligently as could reasonably be expected [see *Caisse Populaire Desjardins Maniwaki v. Canada (Attorney General)*, 2003 FC 1165].

[16] The Applicant provided a reasonable explanation for the delay that is consistent with other evidence on the record about her activities of daily living and her physical restrictions. There is no prejudice to the Respondent given the short duration of the delay, which was less than two months after the 90-day limit.

[17] However, the matter does not disclose an arguable case, and that factor is determinative here. It is not in the interests of justice to allow the extension of time. While the Applicant has raised a ground of appeal under the DESDA by alleging that the General Division committed an error of law in determining that her disability was not severe, there is no argument or evidence to support this assertion and therefore the appeal has no reasonable chance of success. The Tribunal gave the Applicant an opportunity to provide a reason why her appeal had a reasonable chance of success, but the Applicant has not provided such a reason. Her submissions restate some of the legal principles to be applied in determining whether a disability is severe, but she does not identify any arguable case for how the General Division erred in law. The Applicant does not have an arguable case on appeal under the DESDA.

[18] The Appeal Division should go beyond a mechanistic review of the grounds of appeal [see *Karadeolian v. Canada (Attorney General)*, 2016 FC 615]. The Appeal Division examined the record and is satisfied that the General Division did not overlook or misconstrue any of the

evidence. The General Division found that the Applicant's minimum qualifying period (MQP) ended on December 31, 2005. The General Division found that at that time of the MQP, the Applicant was self-employed as a bookkeeper, that symptoms of her disability did not arise until 2007, and that the Applicant opened her own business and worked at it until 2014 (paras. 25-26). The Appeal Division has located no medical or other evidence in the record that was overlooked or misconstrued that would assist the Applicant in showing that she had a severe disability on or before the MQP date.

CONCLUSION

[19] As the matter does not disclose an arguable case, the request for an extension of time is refused.

Kate Sellar
Member, Appeal Division