



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. T. v. Minister of Employment and Social Development*, 2017 SSTADIS 624

Tribunal File Number: AD-17-110

BETWEEN:

D. T.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Shu-Tai Cheng

Date of Decision: November 14, 2017

REASONS AND DECISION

DECISION

[1] An extension of time to request leave to appeal is refused.

INTRODUCTION

[2] The Applicant, D. T., seeks a disability pension under the *Canada Pension Plan* (CPP). He claims that chronic back pain prevents him from working. He last worked in October 2012.

[3] The General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension was payable. It concluded that the Applicant had a severe and prolonged disability in October of 2015 and that, therefore, payments start as of February 2016.

[4] The Applicant filed an incomplete application for leave to appeal (Application) with the Tribunal's Appeal Division on January 24, 2017. The Application was completed on March 27, 2017, well beyond appeal period.¹

ISSUE

[5] Should an extension of time to file the Application be granted?

THE LAW

[6] An application for leave to appeal must be made to the Appeal Division within 90 days after the day on which the decision appealed from was communicated to the Applicant.²

[7] When considering whether to grant an extension of time, I must review and weigh the criteria as set out in case law. The Federal Court has stated that the criteria are as follows:³

- a) A continuing intention to pursue the application or appeal;
- b) The matter discloses an arguable case;

¹ Paragraph 57(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

² *Ibid.*

³ *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883.

- c) There is a reasonable explanation for the delay; and
- d) There is no prejudice to the other party in allowing the extension.

[8] The weight to be given to each of these 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.⁴

[9] On the question of whether a party has an arguable case, the question at law is akin to determining whether that party, legally, has a reasonable chance of success.⁵

APPLICANT'S SUBMISSIONS

[10] The Applicant was asked to file submissions on why an extension of time should be granted. He was given until June 23, 2017, but did not provide submissions.

[11] The Application includes assertions that the medical information proves a disability “much earlier” and back “to 2003,” and the Applicant requests his CPP disability pension be “paid back” to an earlier date.

ANALYSIS

[12] I find that a completed Application was filed on March 27, 2017. The Application states the date that the Applicant had received the General Division decision as “November 2016.” However, the decision was mailed to the Applicant on June 8, 2016, and the Applicant’s representative called the Tribunal on June 15, 2016, and made reference to the General Division decision. Therefore, I find that the Applicant received the decision on June 15, 2016 (and not November 2016).

[13] Thus, the Applicant had until December 12, 2017, within which to file a completed Application in order to comply with the appeal period. By completing the Application on March 27, 2017, the Applicant was 105 days late.

⁴ *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

⁵ *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[14] The Applicant was asked to explain the reasons for his delay, but he did not. Therefore, the Appeal Division must decide based on the information already on file.

[15] The Applicant, having provided no explanation for the delay, also gave no additional information to the Appeal Division on his continuing intention to pursue the appeal. According to Tribunal telephone logs, the Applicant's representative called the Tribunal twice on June 15, 2016, about the General Division decision. The Applicant did not communicate with the Tribunal again until January 24, 2017, when he filed an incomplete Application. It is, therefore, not possible to find that he had an intention to appeal during the period between June 15, 2016, and January 24, 2017.

[16] There appears to be no prejudice to the other party in allowing the extension.

[17] The determinative factor is whether the matter discloses an arguable case. If the Application does not disclose an arguable case, then there is no point to granting an extension of time. The overriding consideration is that the interests of justice be served, and the interests of justice would not be served by granting an extension of time in a matter that has no reasonable chance of success.

Arguable Case

[18] Is there an arguable ground upon which the proposed appeal might succeed?

[19] The Application argues that there are "doctor's letters as far back as 2003" that say the same thing as the October 2015 medical report that is referenced in the General Division decision.

[20] The medical information in 2003 does not help the Applicant's cause. He worked until October 2012 and cannot be said to have had a disability as defined in the CPP in 2003. The evidence in the appeal record is consistent with the General Division's conclusion that the Applicant's condition worsened after he had closed his business in October 2012.

[21] There was only sparse medical documentation from 2012 to 2015. Based on the medical evidence, the General Division found that the Applicant could not establish severity in July 2013. However, by October 5, 2015, a severe disability was established. These findings were

based on the material before the General Division and were not made in a perverse or capricious manner.

[22] I have read and carefully considered the General Division's decision and the record. There is no suggestion that the General Division failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law or any erroneous findings of fact that the General Division, in coming to its decision, may have made in a perverse or capricious manner or without regard for the material before.

[23] I am satisfied that this matter does not disclose an arguable case.

CONCLUSION

[24] An extension of time to apply for leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division