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

Citation: *F. Y. v. Minister of Employment and Social Development*, 2017 SSTADIS 675

Tribunal File Number: AD-16-1367

BETWEEN:

F. Y.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

HEARD ON:

DATE OF DECISION: November 23, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] In February 2013, the Appellant applied for a Canada Pension Plan disability pension and claimed that he was disabled by paranoid schizophrenia. The Respondent refused the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal of Canada (Tribunal). On April 15, 2016, the Tribunal's General Division dismissed the appeal on the basis that it had been brought after the time permitted to do so. The Appellant requested leave to appeal this decision to the Tribunal's Appeal Division. Leave to appeal was granted on August 21, 2017. The Respondent filed detailed legal submissions after leave to appeal had been granted. The Appellant also filed submissions and a medical certificate regarding his mental illness.

THE LAW

[2] The Federal Court of Appeal decision in *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, decided that administrative tribunals must look first to their home statutes for guidance in determining their role and what standard of review is to be applied on an appeal.

[3] The *Department of Employment and Social Development Act* (DESD Act) is the home statute for this Tribunal. Section 58 provides the only grounds of appeal that the Appeal Division can consider. They are that the General Division breached the principles of natural justice; erred in law; or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.

[4] Paragraphs 58(1)(*a*) and (*b*) of the DESD Act do not qualify errors of law or breaches of natural justice, which suggests that the Appeal Division should afford no deference to the General Division's interpretations. The word "unreasonable" is not found in paragraph 58(1)(*c*), which deals with erroneous findings of fact. Instead, the test contains the qualifiers "perverse or capricious" and "without regard for the material before it." The language suggests that the Appeal Division should intervene when the General Division bases its decision on an error that is clearly egregious or at odds with the record.

[5] The Appellant submits that the General Division based its decision on erroneous findings of fact regarding the date on which the Appeal Division had received the Application for Leave to Appeal, as well as failing to assess the evidence regarding his claimed disability.

[6] I must decide, first, whether the General Division erred in concluding that the appeal had not been filed with the General Division in time.

[7] The following facts are not in dispute:

a) The Appellant applied for a disability pension in 2013.

b) The Respondent refused the application initially and on reconsideration.

c) The reconsideration decision letter was dated May 9, 2014.

d) The reconsideration decision was sent to the Appellant by regular mail at his address in Chile.

e) On July 25, 2014, the Appellant sent a letter to Service Canada requesting an appeal of the reconsideration decision (GD1-4).

f) The Appellant was advised to appeal the decision to the Tribunal, which he did.

g) The Notice of Appeal to the Tribunal's General Division was received on December 9, 2014 (GD1A 4-6).

h) The Notice of Appeal was incomplete, as it did not include the date on which the Appellant had received the reconsideration decision, or a copy of this decision.

i) In a letter that the Tribunal received on March 24, 2015, the Appellant filed a copy of the reconsideration decision (GD1A-1 to 7).

j) By email dated February 12, 2016, the Appellant's sister stated that the Appellant did not remember when he had received the reconsideration decision (GD1B).

[8] Section 52 of the DESD Act requires that an appeal to the Tribunal's General Division be brought in the prescribed form and manner, and within 90 days of when the reconsideration decision was communicated to the Appellant.

[9] Because the Appellant responded to the reconsideration decision, it is clear that it had been communicated to him. The General Division found that the decision would have been communicated to him 30 days after it had been made. That would have been June 10, 2014. The General Division may have erred in not setting out clearly in the decision the evidentiary basis for deciding that 30 days was the appropriate time for the reconsideration decision to reach the Appellant. However, for the reasons below, if this was an error, it is not material to the outcome of the appeal before me.

[10] If the reconsideration letter was communicated to the Appellant on June 10, 2014, he would have had to file an appeal to the Tribunal on or before September 10, 2014. If the General Division erred in finding that the decision had been communicated to him on this date, and the decision had actually been communicated to him after that date, then the time to file the appeal with the Tribunal would be extended accordingly. I am satisfied, however, that the reconsideration decision had been communicated to the Appellant prior to July 25, 2014, when he responded to the letter. So, the latest possible date by which the appeal should have been filed with the Tribunal was October 23, 2014.

[11] Based on the undisputed facts above, the appeal was not brought within 90 days as required by subsection 52(1) of the DESD Act. However, subsection 52(2) states that the Tribunal may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the date on which the decision was communicated.

[12] An appeal is not brought to the Tribunal until it is complete. Immediately after he had filed the Notice of Appeal with the Tribunal, the Appellant was notified that his appeal was not complete. The reconsideration letter and the date on which it was communicated to him were missing. The reconsideration letter was filed with the Tribunal within one year of when that decision had been communicated to him. It was not, however, until February 2016 that the Appellant notified the Tribunal that he could not remember when the reconsideration decision had been communicated to him. The appeal was therefore not complete until February 12, 2016.

[13] February 12, 2016, is more than one year after the latest possible date on which the reconsideration decision could have been communicated to the Appellant.

[14] Therefore, General Division correctly concluded that the appeal cannot proceed, as it was not brought in the time permitted by the DESD Act.

[15] The Appellant argues that the General Division erred because it did not set out sufficient reasons for deciding that he must have received the reconsideration decision. I am not convinced that the reasons for this are insufficient. The General Division referred to the *Social Security Tribunal Regulations*, which provide that a document is deemed to be received ten days after it is mailed. Because the Appellant resides in Chile, the General Division allowed for extra time for the mail to reach him. This is clearly set out in the decision. I am not satisfied that this was an error.

[16] If I am wrong on this, a failure to provide sufficient reasons for a decision is not a stand-alone basis for setting aside a decision, and the issue should be examined within the purview of whether the reasoning/outcome of the decision is reasonable (*Ramlochan v. Canada (Attorney General)*, Federal Court docket T-148-13). As the outcome of the General Division decision is reasonable in this case, the appeal cannot succeed on the basis that the General Division gave insufficient reasons.

[17] As the appeal must be dismissed because it was filed late, I need not consider whether the General Division erred by not considering whether the Appellant was disabled under the legislation.

CONCLUSION

[18] The appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division