



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. A. v. Minister of Employment and Social Development*, 2017 SSTGDIS 183

Tribunal File Number: GP-17-2473

BETWEEN:

A. A.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Adam Picotte

DATE OF DECISION: November 27, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for a *Canada Pension Plan* disability pension. The Respondent denied the application initially and, in a decision letter dated February 28, 2017 denied the application upon reconsideration. The Appellant appealed that decision to the Tribunal on October 6, 2017, beyond the 90-day limit set out in paragraph 52(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

ISSUE

[2] The Tribunal must decide whether to allow an extension of time for the Appellant to appeal pursuant to subsection 52(2) of the DESD Act.

ANALYSIS

[3] The Tribunal finds that the appeal was filed after the 90-day limit. The Respondent's reconsideration decision was dated February 28, 2017. The Tribunal assumes that the reconsideration decision was sent to the Appellant by mail. The Tribunal takes judicial notice of the fact that mail in Canada is usually received within 10 days. The Tribunal therefore finds that the reconsideration decision was communicated to the Appellant by March 10, 2017.

[4] In accordance with paragraph 52(1)(b) of the DESD Act, the Appellant had until June 8, 2017 to file an appeal.

[5] The Appellant filed an incomplete appeal on September 27, 2017. In a letter dated September 29, 2017 the Tribunal stated that the Appellant's appeal was incomplete as he failed to provide the Tribunal with a copy of the reconsideration decision being appealed. On October 12, 2017, the Appellant filed the missing information, at which time the appeal was complete.

[6] In deciding whether to allow further time to appeal, the Tribunal considered and weighed the four factors set out in *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883. The overriding consideration is that the interests of justice be served (*Canada (Attorney General) v. Larkman*, 2012 FCA 204).

Continuing Intention to Pursue the Appeal

[7] The Appellant indicated in his application that he was seeking the assistance of a community organization to assist in his appeal and that this caused him to be delayed in filing his notice of appeal.

[8] The Tribunal finds that the Appellant had a continuing intention to pursue the appeal.

Arguable Case

[9] The Appellant claims that he could no longer work because of pain from multiple motor vehicle accidents. The information on file reflects that the Appellant does not have a minimum qualifying period to allow him to qualify for a CPP disability benefit. At no time did he have sufficient contributions to meet the contributory requirements of the minimum qualifying period. Without a minimum qualifying period the Appellant cannot be considered for entitlement to a disability benefit.

[10] Secondly, even if the Appellant had sufficient contributions to qualify for a disability benefit he has been in receipt of a retirement pension since August 2011. Section 70(3) of the CPP sets out that a person cannot apply for a disability benefit after starting a retirement pension. Section 66.1(1.1) of the CPP Regulations details that a retirement pension cannot be cancelled in favour of a disability benefit if a person is deemed disabled in or after the month the retirement pension first became payable. Section 42(2)(b) of the CPP sets out that an applicant has 15 months to apply for a disability benefit after the retirement pension first became payable. The effect of these provisions is such that an Appellant is prevented from cancelling a retirement pension in favour of a disability benefit if he has waited greater than 15 months to make such an application. There is a requirement of the CPP and the Tribunal has no jurisdiction to overlook this requirement. The Appellant commenced receiving his retirement pension in August 2011 and made his application for a disability benefit on January 17, 2017. This is greater than 15 months. As a result, it appears from the record that the Appellant cannot qualify for a disability benefit. The Tribunal finds that there is no indication of an arguable case.

Reasonable Explanation for the Delay

[11] The Appellant submits that he was obtaining assistance from community organizations prior to submitting his application.

[12] The Tribunal finds that the Appellant provided a reasonable explanation for the delay in filing the appeal.

Prejudice to the Other Party

[13] The Respondent's interests do not appear to be prejudiced given the short period of time that has lapsed since the reconsideration decision. The Minister's ability to respond, given its resources, would not be unduly affected by an extension of time to appeal.

CONCLUSION

[14] In consideration of the *Gattellaro* factors and in the interests of justice, the Tribunal refuses an extension of time to appeal pursuant to subsection 52(2) of the DESD Act.

[15] While three of the four factors under *Gattellaro* have been met the test is not simply a numbers game. Rather the Tribunal must assess where these factors lay in respect of the interests of justice.

[16] In this matter and as detailed above the Appellant cannot qualify for a disability benefit because he does not have an MQP. Further even if he did have an MQP he would still be unable to qualify for a disability benefit because he did not apply in time given that he was already in receipt of a retirement pension. Ultimately, even if an extension of time were allowed the appeal would fail for these reasons. With these considerations in mind the Tribunal finds that the weight of the factors must be significantly accorded to whether there is an arguable case. There is no arguable case and therefore the interests of justice demonstrate that an extension should not be allowed.

Adam Picotte
Member, General Division - Income Security