



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. R. v. Minister of Employment and Social Development*, 2017 SSTADIS 766

Tribunal File Number: AD-16-1214

BETWEEN:

**M. R.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: December 28, 2017

## **REASONS AND DECISION**

### **DECISION**

[1] The application for leave to appeal was filed within the time permitted.

[2] The application for leave to appeal is refused.

### **INTRODUCTION**

[3] The Applicant applied for a Canada Pension Plan disability pension in 2011 and claimed that he was disabled by chronic pain and limitations from a work accident. The Respondent refused the application initially and on reconsideration. The Applicant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals. This Tribunal completed its mandate, and the appeal was transferred to the Social Security Tribunal of Canada (Tribunal) on April 1, 2013. On October 16, 2015, the Tribunal's General Division determined that the Applicant had abandoned the appeal as it had not been able to communicate with him by telephone or in writing, and was not satisfied that any documents mailed to him were received by him. On October 17, 2016, the Applicant filed an application for leave to appeal to the Appeal Division (Application).

### **ANALYSIS**

[4] First, I must decide whether the Application was filed within the time permitted. If it was filed in time, I must then decide whether to grant leave to appeal.

#### **The Application Was Filed in Time**

[5] The *Department of Employment and Social Development Act* (DESD Act) governs the operation of this Tribunal. Section 57 states that an application for leave to appeal must be filed with the Tribunal within 90 days of when the General Division decision was communicated to an applicant. In this case, the General Division decision is dated October 16, 2015. It was mailed to the Applicant, and returned with a notation that he did not live at the address the decision was mailed to.

[6] In the Application, the Applicant declared that he did not receive the General Division decision until October 14, 2016, and that it was “lost in the mail.” I am satisfied that the General Division decision was communicated to the Applicant on October 14, 2016. Clearly, it was not communicated when originally mailed to him as that mail was returned to the Tribunal. The Applicant did not keep the Tribunal apprised of his contact information when the matter was before the General Division. There is no reason to doubt when he actually received the decision.

[7] I am also satisfied that the Applicant filed the Application on October 17, 2016, which was within 90 days of the General Division decision being communicated to the Applicant. Therefore, the Application was filed within the time permitted.

### **Leave to Appeal**

[8] According to subsections 56(1) and 58(3) of the DESD Act, 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] The only grounds of appeal available under the DESD Act are set out in subsection 58(1), namely, that the General Division failed to observe a principle of natural justice, made an error of 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. Subsection 58(2) states that leave to appeal is to be refused if the appeal has no reasonable chance of success.

[10] I must now decide whether the Applicant has presented a ground of appeal under subsection 58(1) of the DESD Act that may have a reasonable chance of success on appeal.

[11] The Applicant did not identify any grounds of appeal under the DESD Act in the Application; he stated that he continued to have the same medical symptoms, that he had undergone all possible tests, and that his doctors could do nothing more for him. He also enclosed some medical reports.

[12] The Tribunal wrote to the Applicant on October 25, 2016, and requested that he identify grounds of appeal under the DESD Act. The Applicant responded by letter dated November 3, 2016, and stated that the General Division had based its decision on an erroneous finding of fact

under paragraph 58(1)(c) of the DESD Act. He did not specify what finding of fact was erroneous, or how any finding of fact was made perversely, capriciously, or without regard for the information that was before the General Division.

[13] I have reviewed the General Division decision. It did not assess the Applicant's claim on its merits. The General Division found that the Applicant had abandoned his appeal. This decision was based on the numerous unsuccessful attempts to contact the Applicant in writing and by telephone, and after considering section 6 of the *Social Security Tribunal Regulations*, which requires a claimant to notify the Tribunal of any change in their contact information without delay, which the Applicant had not done.

[14] The Applicant's arguments do not point to any erroneous finding of fact under subsection 58(1) of the DESD Act. He did not dispute the factual basis of the decision, including that he did not advise the Tribunal of changes to his contact information and that the Tribunal could not contact him. I am also satisfied that the General Division observed the principles of natural justice and made no error of law.

[15] The Application has not raised a ground of appeal under the DESD Act that has a reasonable chance of success on appeal. Leave to appeal must therefore be refused.

Valerie Hazlett Parker  
Member, Appeal Division