



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *H. D. v. Minister of Employment and Social Development*, 2017 SSTADIS 763

Tribunal File Number: AD-16-843

BETWEEN:

**H. D.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

---

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

---

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: December 22, 2017

## REASONS AND DECISION

### DECISION

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

### INTRODUCTION

[2] The Applicant completed high school and some post-secondary education. He worked as a forklift driver until he was laid off in 1997, then he was the primary caregiver for his children. The Applicant was involved in a car accident in January 2002 and claimed that he was disabled as a result of the physical and mental injuries he suffered in the accident. He applied for a Canada Pension Plan disability pension on February 28, 2012. The Respondent refused the application initially and on reconsideration. The Applicant appealed the reconsideration decision to the Social Security Tribunal of Canada (Tribunal). On December 23, 2015, the Tribunal's General Division decided that the Applicant was disabled as of 2002 as he claimed. However, paragraph 42(2)(b) of the *Canada Pension Plan* (CPP) provides that a claimant cannot be deemed to be disabled more than 15 months before they applied, so he was deemed to be disabled in November 2010. Further, under section 69 of the CPP, payments start four months after the deemed date of disability, which was March 2011. The Applicant filed an incomplete application for leave to appeal (Application) with the Tribunal's Appeal Division on June 20, 2016. The Application was completed on August 3, 2016.

### ANALYSIS

[3] I must first determine whether the Application was filed late and, if so, whether the Applicant should be granted an extension of time to file the Application. If an extension of time is granted, I must then decide whether the Applicant has presented a ground of appeal under subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) that has a reasonable chance of success on appeal.

#### **Extension of Time to File the Application**

[4] The DESD Act governs the operation of the Tribunal. Section 57 provides that an appeal to the Appeal Division must be made within 90 days after the day on which the decision is communicated to the appellant. In this case, the General Division decision is dated December

23, 2015. However, the Applicant stated in a letter to the Tribunal that he did not know of the decision until March 17, 2016, when his social assistance income was adjusted to account for the disability pension that became payable. The Applicant filed an incomplete Application within 90 days of March 17, 2016.

[5] However, the Application was not completed until August 2016. This is more than 90 days after the decision was communicated to the Applicant, so it was filed late.

[6] Subsection 57(2) of the DESD Act states that the Appeal Division may allow further time for filing of an application. I must therefore decide whether to extend the time for the Applicant to file his Application.

[7] In assessing whether to extend the time to file the Application, I am guided by decisions of the Federal Court. In *Canada (Minister of Human Resources Development) v. Gatellaro*, 2005 FC 883, the Federal Court concluded that the following factors must be considered and weighed when deciding this issue:

- a) There is a continuing intention to pursue the application;
- b) There is a reasonable explanation for the delay;
- c) There is no prejudice to the other party in allowing the extension; and
- d) The matter discloses an arguable case.

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

[9] In this case, I am satisfied that the Applicant had a continuing intention to pursue the Application as he provided the missing document (a declaration that the statements in the application were correct) shortly after being advised by the Tribunal that it was required.

[10] The Applicant did not provide any explanation for his delay in filing the missing information. I make no finding with respect to this.

[11] The Respondent claims that it would be prejudiced if leave to appeal were granted as the Applicant has not presented an arguable case on appeal. I will consider the issues of prejudice and arguable case together.

[12] Set out below are the reasons for concluding that the Applicant has not presented an arguable case on appeal:

- a) The Applicant was found to be disabled in 2002 after the car accident, and he claims that he should receive the disability pension as of that date, not March 2011 as set out in the General Division decision. However, paragraph 42(2)(b) of the CPP clearly states that for payment purposes a claimant cannot be deemed to be disabled more than 15 months prior to the date of their application. There is no dispute that the application date is February 2012. Therefore, the earliest that the Applicant can be deemed disabled for payment purposes is November 2010. Section 69 of the CPP says that payments start four months after the deemed date of disability. This is March 2011. The General Division made no error in this regard. There is no ground of appeal disclosed by this argument that could arguably succeed on appeal.
- b) The Tribunal has only the legal authority given to it by the DESD Act. Subsection 64(2) states that the Tribunal can decide questions of law or fact relating only to whether any benefit is payable, whether a person is eligible for a division of unadjusted pensionable earnings or its amount, whether a person is entitled to an assignment of a retirement pension, and whether a penalty should be imposed under the legislation. Therefore, the Tribunal cannot make a decision regarding the distribution of a disability pension to a social service agency, eligibility for a disability tax credit or the impact of military service on the amount of benefits payable. The Applicant's arguments regarding these issues do not point to any arguable case on appeal.

[13] Therefore, I am satisfied that the Applicant has not presented an arguable case on appeal. The Respondent would be prejudiced if an extension of time were granted in this case as it would have to expend time and resources to respond to a claim that has no reasonable chance of success. It is also not in the interests of justice to extend the time for the Application to be

filed when it has no reasonable chance of success on its merits. Thus, an extension of time to file the Application is refused, and the Application cannot proceed as it was filed late.

### **Leave to Appeal**

[14] If I am wrong on this, and time should be extended, I am satisfied that leave to appeal should be refused for the following reasons.

[15] The only grounds of appeal available to the Appeal Division under the DESD Act are the following:

- 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.

[16] Subsection 58(2) of the DESD Act provides that leave to appeal is to be refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

[17] The Federal Court of Appeal has also found that an arguable case at law is akin to whether, legally, an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63. Therefore, the same considerations apply to deciding whether to grant leave to appeal as to deciding whether the Applicant presented an arguable case for an extension of time. The Applicant has not presented a ground of appeal under subsection 58(1) of the DESD Act that has a reasonable chance of success for the reasons set out above.

[18] The Applicant has not suggested that the General Division failed to observe a principle of natural justice, and I can find no indication that it did so. I have also reviewed the General Division decision and the written record and am satisfied that the General Division made no

error of law and did not overlook or misconstrue any important facts. The Application is therefore refused.

Valerie Hazlett Parker  
Member, Appeal Division