



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. A. v. Minister of Employment and Social Development*, 2018 SST 141

Tribunal File Number: AD-17-738

BETWEEN:

A. A.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: February 9, 2018

DECISION AND REASONS

DECISION

Leave to appeal is refused.

INTRODUCTION

[1] The Applicant, A. A., applied for a Canada Pension Plan (CPP) disability pension in May 2015. The Respondent, the Minister of Employment and Social Development Canada (ESDC), refused the application initially and again on reconsideration in a letter dated January 13, 2016 (reconsideration letter).

[2] On January 30, 2017, Ms. A. A. submitted a notice of appeal to ESDC, which returned it, informing her that it was misdirected. Ms. A. A. then filed the notice of appeal with the General Division of the Social Security Tribunal, which received it on March 2, 2017, beyond the time limit set out in the *Department of Employment and Social Development Act* (DESDA).

[3] In a decision dated August 18, 2017, the General Division found that Ms. A. A.'s appeal was brought more than one year after she received the reconsideration letter. As a result, pursuant to subsection 52(2) of the DESDA, no extension of time to file an appeal was granted.

[4] On October 20, 2016, Ms. A. A. filed an application for leave to appeal with the Tribunal's Appeal Division, within the time limit set out in paragraph 57(1)(b) of the DESDA. She requested a total review of her claim because her health condition had deteriorated, and she was incapable of returning to work.

[5] In response to a request for further information, Ms. A. A. wrote a letter expressing frustration with what she saw as a series of reflexive denials of her claim for disability benefits. She reiterated the severity of her health problems and noted that she had already explained the delay, which she attributed to sickness and an inability to function.

ISSUE

[6] According to section 58 of the DESDA, there are only three grounds of appeal to the Appeal Division: The General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material. An appeal may be brought only if the Appeal Division first grants leave to appeal,¹ but the Appeal Division must first be satisfied that the appeal has a reasonable chance of success.² The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.³

[7] I must decide whether Ms. A. A. has presented an arguable case that falls into one or more of the grounds set out in section 58 of the DESDA. In particular, I must consider whether the General Division erred in refusing Ms. A. A. an extension of time in which to file her appeal.

ANALYSIS

[8] I have reviewed the record, and I see no arguable case for any ground of appeal.

[9] Pursuant to paragraph 52(1)(b) of the DESDA, an appeal must be brought to the General Division within 90 days after the day on which the decision was communicated to the appellant. Under subsection 52(2), the General Division 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 day on which the decision is communicated to the appellant.

[10] The General Division found that the notice of appeal was submitted to the Tribunal more than one year after receipt of ESDC's reconsideration letter, and I can see no arguable case that, in doing so, it relied on an erroneous finding of fact, misapplied the law or treated Ms. A. A. unfairly.

[11] Ms. A. A. has not denied in any of her correspondence that her notice of appeal was submitted more than one year after she received the reconsideration letter—whether the

¹ DESDA at subsections 56(1) and 58(3).

² *Ibid.* at subsection 58(1).

³ *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

submission date is deemed to be January 30, 2017, when she sent it to ESDC, or March 2, 2017, when it was redirected to the correct destination, the Tribunal.

[12] For appeals submitted more than one year after reconsideration, the law is strict and unambiguous. Subsection 52(2) of the DESDA states that *in no case* may an appeal be brought more than one year after the reconsideration decision was communicated to the appellant. While extenuating circumstances may be considered for appeals that come after 90 days but within a year, the wording of subsection 52(2) all but eliminates scope for a decision-maker to exercise discretion once the year has elapsed. Ms. A. A.'s explanation for filing her appeal late is therefore rendered irrelevant, as are other factors, such as the merits of her disability claim or her financial need.

[13] It is indeed unfortunate that missing a filing deadline may have cost Ms. A. A. an opportunity to appeal, but the General Division was bound to follow the letter of the law, and so am I. Ms. A. A. may regard this outcome as unfair, but I can exercise only such jurisdiction as granted by the Appeal Division's enabling statute. Support for this position may be found in *Pincombe v. Canada*,⁴ among other cases, which have held that an administrative tribunal is not a court but a statutory decision-maker and therefore not empowered to provide any form of equitable relief.

CONCLUSION

[14] In my view, the General Division did not base its decision to deny an extension to appeal on an erroneous finding of fact, nor did it err in law or breach a principle of natural justice. As I see no reasonable chance of success on the grounds of appeal put forward, the application for leave to appeal is refused.



Member, Appeal Division

⁴ *Pincombe v. Canada (Attorney General)*, [1995] FCJ No. 1320 (FCA).

REPRESENTATIVE:	A. A., Self-represented
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