



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. T. v. Minister of Employment and Social Development*, 2018 SST 224

Tribunal File Number: AD-18-50

BETWEEN:

A. T.

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: March 7, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is granted.

OVERVIEW

[2] A. T. (Claimant) worked for many years, mostly in office environments, until 2015. The Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled by a number of conditions, including vertigo, fibromyalgia, hearing loss and Ménière's disease. The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Social Security Tribunal. The Tribunal's General Division allowed the appeal and determined that the Claimant was disabled in June 2017. The Claimant contends that she was disabled in May 2015. The appeal was filed on time, and leave to appeal the date of disability is granted because the General Division may have erred in law and provided insufficient reasons for its decision.

ISSUES

[3] Was the application for leave to appeal (Application) filed within the time permitted?

[4] If the Application was not filed within the time permitted, should the time to file the Application be extended?

[5] If the Application was filed on time, or if time to file it was extended, might there be a reasonable chance of success because the General Division erred in law and failed to give sufficient reasons for its decision that the disability was prolonged?

ANALYSIS

Issue 1: Is the Application filed late, and should time be extended?

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It states that an application for leave to appeal must be made to the Appeal

Division within 90 days after the General Division decision was communicated to the claimant¹. The Claimant received the General Division decision on September 13, 2017. The Application therefore had to be filed with the Tribunal on or before December 12, 2017.

[7] The Claimant completed the Application and sent it to Service Canada in New Brunswick on December 5, 2017. Service Canada advised her that the Application had to be filed with the Tribunal. The Claimant did this on December 18, 2017, beyond the 90 days permitted.

[8] However, the DESD Act also provides that the Appeal Division can extend the time for an application to be filed². The Federal Court teaches that when deciding whether to extend the time to file an application, consideration should be given to whether: (i) the claimant has an explanation for the delay, (ii) the claimant had a continuing intention to appeal, (iii) any party would be prejudiced by the delay, and (iv) there is a reasonable chance of success on appeal.³ Since the Application was filed less than one week late, I am satisfied that the Claimant had a continuing intention to appeal and that there would be no prejudice to any party if the matter proceeded. Also, I accept that the delay was caused by the Claimant filing the Application in the wrong place, which she corrected immediately.

[9] For the reasons set out below, I am also satisfied that the appeal may have a reasonable chance of success. The interests of justice are served if time is extended for the Application to be filed.

Issue 2: Might there be a reasonable chance of success because the General Division erred in law or gave insufficient reasons?

[10] For a claimant to be found disabled under the *Canada Pension Plan*, they must have a disability that is both severe and prolonged. A disability is prolonged “if it is likely to be long continued and of indefinite duration or is likely to result in death.”⁴ The General Division concluded that the Claimant’s disability was prolonged. It did not, however, set out the factual or legal basis for this conclusion. The General Division may therefore have failed to consider

¹ Paragraph 57(1)(b) of the DESD Act.

² Subsection 57(2) of the DESD Act.

³ *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883.

⁴ Subparagraph 42(2)(a)(ii) of the *Canada Pension Plan*.

whether the Claimant met the legal test for her disability to be prolonged. This may be an error in law and bears further consideration on appeal.

[11] The DESD Act requires that the General Division provide written reasons for each decision. These reasons must be sufficient to permit the parties to understand why the Tribunal made the decision it did.⁵ It is not clear why the General Division decided that the Claimant was disabled in June 2017. No explanation is provided for the determination of this date as the date of disability. The Claimant applied for the disability pension in 2015, and her evidence was that she was disabled at that time. Therefore, the appeal may also have a reasonable chance of success because the General Division may have failed to give sufficient reasons for its decision.

CONCLUSION

[12] Time to file the Application is extended.

[13] Leave to appeal is granted. Leave to appeal is restricted to issues regarding the date that the Claimant became disabled under the *Canada Pension Plan* and whether the disability is prolonged.

[14] This decision to grant leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	A. T., self-represented
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⁵ *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.