



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. A. v. Minister of Employment and Social Development*, 2018 SST 587

Tribunal File Number: AD-18-257

BETWEEN:

M. A.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Valerie Hazlett Parker

Date of Decision: June 6, 2018

DECISION AND REASONS

DECISION

[1] An extension of time to apply for leave to appeal is refused.

OVERVIEW

[2] M. A. (Claimant) was injured in a car accident in 2013. This has left her with ongoing back pain from a herniated disc bulge impinging on a nerve, dropped foot, and nerve pain. Despite this she worked part-time at a warehouse store doing night cleaning, wrapping bread and running a dishwasher for a number of months.

[3] The Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled by these injuries. The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal on the basis that the Claimant did not have a severe disability.

[4] The Claimant filed an application for leave to appeal late. The General Division decision was communicated to her on December 12, 2017. She filed the application for leave to appeal on April 19, 2018. This is beyond the 90 days permitted to file an application. An extension of time to file the application is refused because the Claimant did not have a continuing intention to appeal and does not have an arguable case on appeal.

ANALYSIS

[5] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides that an application for leave to appeal must be made within 90 days of when the General Division decision is communicated to the claimant.¹ In addition, the Appeal Division may extend the time to file an application.² The Claimant agrees that the application is late, so I must decide whether to grant an extension of time to file it.

¹ DESD Act, s. 57(1)

² DESD Act, s. 57(2)

[6] In assessing the request to extend time to apply for leave to appeal, I am guided by decisions of the Federal Court. The Court has concluded that the following factors must be considered and weighed when deciding this issue:

- a) whether the claimant has a continuing intention to pursue the application;
- b) whether there is a reasonable explanation for the delay;
- c) whether there is prejudice to the other party in allowing the extension; and
- d) whether the matter discloses an arguable case.³

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.⁴

[7] The Claimant states that the reason she filed the application for leave to appeal late was that she thought the General Division decision was final, and it was not until she saw her doctor again in March 2018 that she re-read the decision. At that time, the Claimant's doctor said that she was disabled. This does not demonstrate that the Claimant had a continuing intention to appeal the General Division decision; rather, she decided to request leave to appeal in March 2018.

[8] I am satisfied that the Claimant's explanation for not filing the application on time is reasonable. She filed it soon after she decided to seek leave to appeal. In addition, since the application was filed within a month of the deadline to do so, it is very unlikely that there would be any prejudice to any party if the matter were to continue.

[9] I am not satisfied that the Claimant has an arguable case on appeal. The DESD Act sets out only three grounds of appeal that can be considered, namely, that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or

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

⁴ *Canada (Attorney General) v. Larkman*, 2012 FCA 204

without regard for the material before it.⁵ In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.⁶ In law, having a reasonable chance of success is akin to having an arguable case.

[10] The Claimant's ground of appeal is that she "was taken off work" by her doctor at the end of March 2018. She therefore argues that the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it when it concluded that she had been able to maintain her employment for a number of months, and that this demonstrated work capacity.⁷

[11] However, the General Division based its decision on the evidence that was before it at the hearing in December 2017. The decision summarized the written evidence and.⁸ I have reviewed the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. The medical evidence before the General Division established that the Claimant was injured in the car accident, and that she has limitations, including sitting, standing, lifting, walking restrictions, and ongoing pain. Dr. Chu noted that there was nothing further that could be done, except for the Claimant to change to a lighter work career.⁹ The Claimant testified that she was working at the warehouse store without accommodations, although she found it excruciating.¹⁰

[12] In addition, the Claimant's condition had to be examined at the end of the minimum qualifying period, which was December 31, 2016. Therefore, that the Claimant could no longer work in 2018 was not relevant to the decision that had to be made.

[13] For these reasons, the appeal does not have a reasonable chance of success.

[14] Therefore, the Claimant has not met the legal criteria set out by the Federal Court to be granted an extension of time to file an application for leave to appeal. In addition, it is not in the

⁵ DESD Act, s. 58(1)

⁶ DESD Act, s. 58(2)

⁷ General Division decision, para. 46

⁸ General Division decision, paras. 5 through 38

⁹ *Ibid.*, para. 27

¹⁰ *Ibid.*, para. 36

interests of justice to extend the time to appeal when the appeal does not have a reasonable chance of success.

CONCLUSION

[15] An extension of time to apply for leave to appeal is refused.

Valerie Hazlett Parker
Member, Appeal Division

SUBMISSIONS:	M. A., self-represented
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