Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *G. C. v. Minister of Employment and Social Development*, 2018 SST 951

Tribunal File Number: AD-15-1608

BETWEEN:

G. C.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Neil Nawaz

Date of Decision: September 27, 2018

DECISION AND REASONS

DECISION

[1] The request for an extension of time to apply for leave to appeal is refused.

INTRODUCTION

[2] The Applicant, G. C., sustained repetitive strain injuries while working as a packer. She has not worked since 2003 and is now 47 years old. In 2006, she applied for a Canada Pension Plan (CPP) disability pension. The Respondent, the Minister of Employment and Social Development (Minister), refused the application because it found that she did not have a severe and prolonged disability as of her minimum qualifying period, which ended on December 31, 2005. The Applicant appealed the Minister's decision to the Office of the Commissioner of Review Tribunals (OCRT). In July 2008, a review tribunal dismissed the appeal.

[3] In January 2012, the Applicant applied for a CPP disability pension a second time. The Minister again refused her application, and she again appealed to the OCRT. In April 2013, the OCRT was abolished, and the Applicant's appeal was transferred to General Division of the Social Security Tribunal. In October 2015, the General Division dismissed the appeal because it was *res judicata*—the matter had already been decided in 2008 and could not be revisited.

[4] On December 17, 2015, the Applicant submitted an application requesting leave to appeal to the Appeal Division. In her application, she wrote:

> The reason I am applying again is because I'm not a healthy person, I have a lot of problems; depression, pain in both hands, neck and left shoulder and right wrist, benign pituitary adenoma. I see a specialist twice a year. With the years passing I'm feeling worst [*sic*]. Please review my application.

[5] In a letter dated December 29, 2015, the Tribunal informed the Applicant that she had put forward insufficient grounds for her appeal and that her application would be considered incomplete until she explained, in writing, why she believed her appeal would have a reasonable chance of success. The Tribunal gave the Applicant until January 28, 2016, to submit the missing

information, after which time a Tribunal member would decide whether an extension of time could be granted.

[6] The record shows that the Applicant telephoned the Tribunal on January 14, 2016, seeking clarification about the required information. There is no indication that the Applicant submitted any material before the specified deadline.

[7] On January 6, 2017, the Tribunal advised the Applicant that it was closing her file. This prompted her to make a series of calls to the Tribunal demanding an explanation for what had happened. In November 2017 and May 2018, she asked for status updates; both times, Tribunal staff told her that her file was closed.

[8] In August 2018, the Applicant submitted another application for leave to appeal to the Appeal Division. In it, she said that she received the General Division's decision on January 6, 2017. She said that her appeal was late because she did not receive an application form. She said that she continued to experience the same health problems that she had listed in her original application.

ISSUE

[9] I must decide whether the Applicant should be granted an extension of time in which to apply for leave to appeal.

ANALYSIS

[10] Having reviewed the record, I find that the Applicant is barred from pursuing her application for leave.

[11] Pursuant to s. 57(1)(*b*) of the *Department of Employment and Social Development Act* (DESDA), an appeal must be brought to the Appeal Division within 90 days after the day on which the decision was communicated to the prospective appellant. Under s. 57(2), the Appeal Division may allow further time to bring an appeal, 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.

[12] In this case, the General Division's decision was issued and mailed to the Applicant on October 16, 2015. On December 17, 2015, the Applicant filed an application for leave to appeal with the Appeal Division, but it was incomplete: she did not address any of the three grounds of appeal specified in s. 58(1) of the DESDA and merely summarized her health problems; she did not explain why she believed her appeal would have a reasonable chance of success, as required by s. 58(2) of the DESDA. Under s. 40(1)(*c*) of the *Social Security Tribunal Regulations*, an application for leave to appeal must contain grounds for the application. Despite repeated reminders to do so, the Applicant failed to supply the missing information. Nearly three years later, in August 2018, she filed what I would characterize as a second application for leave to appeal and, although it addressed relevant grounds of appeal in technical terms, it arrived well past any of the previous deadlines.

[13] The law is strict and unambiguous for applications for leave to appeal that are completed after the one-year deadline. While extenuating circumstances may be considered for appeals that come after 90 days but within a year, the wording of s. 57(2) of the DESDA all but eliminates scope for a decision-maker to exercise discretion once 365 days have elapsed. The Applicant's explanation for filing her appeal late is therefore rendered irrelevant, as are such factors as her language difficulties or lack of resources to retain legal assistance.

[14] I regret having to deny the Applicant an avenue of appeal, but I am bound to follow the letter of the law and cannot simply order what I feel to be a just result. That power, known as "equity," has traditionally been reserved to the courts, although even they typically exercise it only if there is no adequate remedy at law. *Canada v. Tucker*,[1] among many other cases, has confirmed that an administrative tribunal is not a court but a statutory decision-maker and, therefore, is not empowered to provide any form of equitable relief.

[1] *Canada (Minister of Human Resources Development) v. Tucker*, 2003 FCA 278.

CONCLUSION

[15] The application is refused.

Member, Appeal Division

REPRESENTATIVE:	G. C., self-represented