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

Citation: *K. L. v. Minister of Employment and Social Development*, 2018 SST 975

Tribunal File Number: AD-18-483

BETWEEN:

K. L.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: October 4, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] In June 2014, K. L. (Applicant) applied for a disability pension under the terms of the *Canada Pension Plan* (CPP). Her application was based on severe pain in her right leg and lower back that caused her to stop working in January 2011. Her application was denied by the Respondent, the Minister of Employment and Social Development (Minister), at the initial and reconsideration levels.

[3] The Applicant admits that she received the Minister's reconsideration decision in March 2015, and she says that she tried to appeal that decision the following month but sent her appeal letter to the wrong address.[1] Instead, her appeal to the Tribunal's General Division was received in March 2018. Since the Applicant's appeal was due within 90 days of receiving the Minister's reconsideration decision, she needed an extension of time for her appeal to proceed. However, the General Division concluded that it had no power to grant that extension of time because the Applicant had received the Minister's reconsideration decision more than a year before filing her appeal.

[4] The Applicant now wants to appeal the General Division decision to the Tribunal's Appeal Division, but she requires leave (or permission) for the file to move forward. Unfortunately for the Applicant, I have concluded that the appeal has no reasonable chance of success. As a result, leave to appeal must be refused.

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[1] GD1-2.

ISSUES

[5] In reaching this decision, I considered the following issues:

a) Has the Applicant raised an arguable ground on which the appeal might succeed?

b) Did the General Division arguably overlook or misconstrue relevant evidence?

ANALYSIS

The Appeal Division's Legal Framework

[6] The Tribunal has two divisions that operate quite differently from one another. At the Appeal Division, the focus is on whether the General Division might have committed one or more of the three errors (or grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). Generally speaking, the only relevant errors concern whether the General Division:

a) breached a principle of natural justice or made an error relating to its jurisdiction;

b) rendered a decision that contains an error of law; or

c) 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.

[7] There are also procedural differences between the Tribunal's two divisions. The Appeal Division's process is in two stages: the leave to appeal stage, followed by the merits stage. This appeal is at the leave to appeal stage, meaning that permission must be granted for it to proceed. This is a preliminary hurdle aimed at filtering out cases that have no reasonable chance of success.[2] The legal test that applicants need to meet at this stage is a low one: Is there any arguable ground upon which the appeal might succeed?[3] Applicants have the responsibility to show that this legal test has been met.[4]

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[2] DESD Act, s 58(2).
[3] *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.
[4] *Tracey v Canada (Attorney General)*, 2015 FC 1300 at para 31.

Issue 1: Has the Applicant raised an arguable ground on which the appeal might succeed?

[8] In my view, the Applicant has not raised an arguable ground on which the appeal might succeed.

[9] The Applicant submitted her application for a CPP disability pension in June 2014.[5] The Minister's initial denial of her application can be found in a letter from Service Canada dated October 2, 2014.[6] This letter informed the Applicant that she had the right to ask that the Minister reconsider its initial decision and that she could pursue that right by writing to Service Canada within 90 days of receiving the letter. The Applicant did indeed write her reconsideration request on November 6, 2014, and the Minister later acknowledged having received it.[7] The Minister's reconsideration decision—again denying the Applicant's request for a CPP disability pension—followed in a letter from Service Canada dated March 11, 2015.[8]

[10] The Minister's letter also included instructions on how the reconsideration decision could be challenged further. Under the heading "If you disagree with this decision", the Applicant was informed of her right to appeal to the Tribunal's General Division and of the 90-day deadline for filing an appeal.[9] In this section of the letter, the Minister also wrote: "For your Notice of Appeal to be accepted, you must provide all the required information **and attach all required documents** before mailing it to the following address…." [Emphasis in original]

[11] The Applicant says that she tried to appeal the Minister's reconsideration decision in a letter dated April 15, 2015, but her letter is addressed to Service Canada rather than to the Tribunal.[10] However, there is nothing in the file indicating that the Minister ever received this letter. Indeed, the Applicant might have sent it to the wrong address.[11] There is also nothing in

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[5] GD2-4 to 7; GD2-41 to 52.
[6] GD2-10 to 12.
[7] GD2-17 to 18.
[8] GD2-19 to 21.
[9] GD2-21; DESD Act, s 52(1)(*b*).
[10] GD1-9.
[11] The Applicant's letter is written to P.O. Box 50 (rather than to P.O. Box 250) and to postal code E3B 7Z6 (rather than to E3B 4Z6).

the file indicating that the Applicant followed up on her appeal request until more than two years later, in October 2017.[12]

[12] Finally, on December 1, 2017, the Applicant wrote to the Tribunal's General Division saying that her letter of appeal had been sent to Service Canada by mistake, but the Tribunal returned her documents to her because her intentions were unclear.[13] Then, on March 1, 2018, the General Division received a duly completed Notice of Appeal form from the Applicant, and it considered her appeal to be complete as of that date.[14] In her Notice of Appeal, the Applicant explained that it was because of her illness that she had sent her appeal letter to the wrong place.

[13] On May 25, 2018, the General Division issued its decision. In short, the General Division concluded that the appeal was filed over a year after the Applicant had received the Minister's reconsideration decision and, therefore, the appeal could not proceed because of section 52(2) of the DESD Act.

[14] Now, in her application requesting leave to appeal to the Appeal Division, the Applicant alleges that the General Division breached a principle of natural justice because she wrote an appeal letter on April 15, 2015, within the 90-day deadline, and because Service Canada should have forwarded her letter to the Tribunal's General Division.

[15] To the extent that the Applicant relies on the principles of natural justice, these principles are generally concerned with ensuring that the parties to a proceeding know and understand the legal case that they have to meet, have the opportunity to present their case, and have the decision made by an impartial decision-maker. However, I do not see an obvious connection between these principles and the possible errors alleged by the Applicant.

[16] Indeed, the Applicant alleges that the Minister or Service Canada failed in its duties to forward correspondence to the Tribunal, yet the DESD Act limits the Appeal Division's role to assessing whether the General Division (and not the Minister or Service Canada) committed one of the three errors listed above. As a result, possible errors that the Minister or Service Canada might have committed are not ones that the Appeal Division can consider.

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[12] GD1-10 to 11; GD2-26 to 27.
[13] GD1-7; GD1-19.
[14] GD1.

[17] In addition, though the Applicant alleges that the Minister had an obligation to forward her letter of April 15, 2015, to the Tribunal's General Division, she has neither pointed to the source of that obligation, nor am I aware of one.

[18] Importantly, the question answered by the General Division concerned whether the Applicant had filed her appeal within one year of when she received the Minister's reconsideration decision. There is no dispute that the Applicant received the Minister's reconsideration decision in March 2015, which therefore marks the beginning of this one-year period.

[19] To the extent that the Applicant is now arguing that the General Division should have considered April 15, 2015—the day she wrote or sent her letter of appeal to Service Canada[15]—as the day when her appeal was filed with the Tribunal's General Division, the alleged error sounds more like an error of law than a breach of the principles of natural justice.

[20] Regardless of how the alleged error is characterized, the Applicant's arguments are, once again, unsupported by any legal authority. In contrast, when deciding that the Applicant's appeal had been filed on March 1, 2018, the General Division focused not on when documents were written or on when they were sent, but on when they were received by the Tribunal.[16] In my view, the General Division's approach was well supported by the clear language of the DESD Act and of the *Social Security Tribunal Regulations* (SST Regulations).[17]

[21] I have concluded, therefore, that the arguments raised by the Applicant have no reasonable chance of success.

Issue 2: Did the General Division arguably overlook or misconstrue relevant evidence?

[22] Regardless of the conclusion above, I am mindful of Federal Court decisions in which the Appeal Division has been instructed to go beyond the four corners of the written materials and consider whether the General Division might have misconstrued or failed to properly account for

[15] Notably, there is some doubt as to whether the Minister ever received the Applicant's letter of April 15, 2015.
[16] GD1.
[17] DESD Act, s 52(1); SST Regulations, ss 7 and 23 to 24.

any of the evidence.[18] If this is the case, then leave to appeal should normally be granted regardless of any technical problems that might be found in the request for leave to appeal.

[23] After reviewing the documentary record and examining the decision under appeal, I am satisfied that the General Division neither overlooked nor misconstrued relevant evidence. I considered the fact that the Applicant first communicated with the Tribunal in December 2017, rather than in March 2018.[19] However, even that earlier communication was beyond the one-year time limit for filing an appeal, so it would not have had any effect on the outcome of this case.

[24] Overall, therefore, the General Division justifiably concluded that the Applicant's appeal was not filed within one year of when she received the Minister's reconsideration decision.

CONCLUSION

[25] While I have sympathy for the Applicant, the terms of the DESD Act are clear: the Tribunal had no power to extend the time for her to file her appeal once more than a year had passed from the time when she received the Minister's reconsideration decision. Because I have concluded that the application requesting leave to appeal has no reasonable chance of success, I must also refuse leave to appeal.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	M. E., for the Applicant

[18] *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.
[19] GD1-7 and GD1-19.