



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. D. v. Minister of Employment and Social Development*, 2018 SST 1087

Tribunal File Number: AD-18-477

BETWEEN:

K. D.

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: October 25, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] K. D. (Claimant) completed high school and then joined the paid workforce. She last worked in 2001 as an administrator until she was laid off. The Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled by symptoms of multiple sclerosis. The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to this Tribunal. The Tribunal's General Division dismissed the appeal because although her condition has deteriorated, the evidence did not prove that she was incapable regularly of pursuing any substantially gainful occupation at the minimum qualifying period (MQP - the date by which a claimant must be found to be disabled in order to receive the disability pension).

[3] The Claimant requested leave to appeal this decision to the Tribunal's Appeal Division after the time to do so had expired. Time to file the application is not extended because the Claimant did not establish that she had a continuing intention to appeal and there is no reasonable chance of success on appeal.

ISSUES

[4] Did the Claimant file the application for leave to appeal late?

[5] If so, should the time to file the application be extended?

ANALYSIS

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It states that an appeal from a General Division decision on a disability pension appeal must be made within 90 days of when the decision is communicated to the

claimant.¹ The time to make the application can be extended, but in no case may an application be made more than one year after the day on which the decision was communicated to the claimant.²

Is the Application late?

[7] In this case, the General Division decision is dated January 12, 2018. The Claimant states that it was communicated to her on April 12, 2018.³ She made the application for leave to appeal (Application) on July 26, 2018, but it was incomplete. The Tribunal wrote to the Claimant and requested that she provide grounds of appeal under the DESD Act.⁴ The Claimant responded to this letter on October 16, 2018, and stated that she had further evidence to file and that she had included letters from friends and family about her case because she was not able to obtain her medical records.⁵

[8] The Claimant filed all of the information to complete the Application on October 16, 2018. This is when the Application was filed. This is more than 90 days after the General Division decision was communicated to the Claimant. Therefore, the Application was filed late.

Should the time to file the application be extended?

[9] The DESD Act allows the Appeal Division to extend the time for parties to file an application. The Federal Court instructs that a decision-maker must consider the following factors when deciding whether to do so:

- a) Is there a continuing intention to pursue the application;
- b) Is there is a reasonable explanation for the delay;
- c) Is there any prejudice to the other party in allowing the extension; and

¹ DESD Act, s. 57(1)

² *Ibid.*, s. 57(2)

³ AD1

⁴ AD1B-1

⁵ AD1B-2

does the matter disclose an arguable case?⁶ Legally, this is the same as whether there is a reasonable chance of success on appeal.

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.⁷

[10] The Claimant has not demonstrated that she had a continuing intention to apply for leave to appeal. She did not contact the Tribunal prior to filing the Application and has given no indication that she took any steps regarding an appeal prior to filing the application form in July 2018, shortly after the 90-day deadline.

[11] In this case, the Claimant explained that she filed the Application late because she was ill. I accept this as a reasonable explanation for her delay.

[12] There is no evidence regarding any prejudice to any party if this appeal were to continue. I make no finding in this regard.

[13] Regarding whether the appeal has a reasonable chance of success, the DESD Act also states that leave to appeal is to be refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.⁸ It also states that there are only three grounds of appeal that the Appeal Division can consider. They are 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 without regard for the material before it.⁹ Therefore, I must consider whether the Claimant has presented a ground of appeal that falls under the DESD Act and that has a reasonable chance of success. I give this factor a great deal of weight because it is also the legal test to be met if I am to grant leave to appeal.

[14] The Claimant bases her Application on her statement that she provided letters from family and friends to support her claim because she was not able to obtain medical records from

⁶ *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883

⁷ *Canada (Attorney General) v. Larkman*, 2012 FCA 204

⁸ DESD Act, s. 58(2)

⁹ *Ibid.*, s. 58(1)

her prior family doctor. This doctor lost his license to practise medicine, and his records have disappeared. The General Division acknowledged the Claimant's difficulties in this regard.¹⁰ It considered the medical evidence on record¹¹ and the Claimant's testimony as well as that of her spouse.¹² The General Division did not base its decision on any error of fact. Rather, it weighed the evidence before it, including that the Claimant continued to be independent, drove, and participated in extracurricular activities with her children at the time of her MQP; she spent a great deal of time reading; and she was not being actively treated or taking any regular medication as of the MQP.¹³ The appeal does not have a reasonable chance of success on the basis of this argument.

[15] The Claimant also states that she will provide more evidence if her appeal is allowed. Generally, the Appeal Division does not consider new evidence.¹⁴ Therefore, the promise of additional evidence is not a ground of appeal upon which the appeal has a reasonable chance of success.

[16] It is not in the interests of justice to extend the time for the Claimant to file the Application. There is no reason for an extension of time when the appeal does not have a reasonable chance of success on its merits. In addition, the Claimant did not establish that she had a continuing intention to apply for leave to appeal.

CONCLUSION

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

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	K. D., self-represented
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¹⁰ General Division decision, para. 26

¹¹ *Ibid.*, para. 27

¹² *Ibid.*, para. 24

¹³ *Ibid.*, para. 29

¹⁴ *Canada (Attorney General) v. O'Keefe*, 2016 FC 503