



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. T. v Minister of Employment and Social Development*, 2019 SST 67

Tribunal File Number: AD-16-1362

BETWEEN:

A. T.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: January 31, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal the decision rendered by the General Division of the Social Security Tribunal of Canada on October 28, 2016, is refused.

OVERVIEW

[2] The Applicant, A. T., applied for a Canada Pension Plan (CPP) disability pension. The Respondent, the Minister of Employment and Social Development, found that the Applicant was ineligible for this pension because he had made insufficient contributions to the CPP.

[3] The Applicant argues that the Respondent should have decided on his disability even though he did not have enough contributions.

[4] The Applicant appealed the Respondent's decision. In its decision of October 28, 2016, the General Division found that the Applicant had not made enough contributions to the CPP to meet the requirements in the CPP. Furthermore, it found that the Tribunal could not consider specific circumstances outside its powers, which is what the Applicant was requesting.

[5] The Applicant submitted an incomplete application for leave to appeal to the Appeal Division on December 10, 2016. He completed this application on December 8, 2018. He asked the Tribunal to analyze his medical certificate to decide on his disability.

[6] The appeal does not have a reasonable chance of success because the Applicant submitted his application to the Appeal Division more than one year after the appeal period, and the Appeal Division cannot extend the time for requesting leave to appeal beyond one year.

ISSUE

[7] Was the application for leave to appeal submitted more than one year after the appeal period ended?

ANALYSIS

[8] An applicant must request leave to appeal a decision rendered by the General Division. An appeal may be brought only if leave to appeal is granted, and the Appeal Division must either grant or refuse leave to appeal.¹

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there a ground of appeal on which the appeal might succeed?²

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error. The only reviewable errors are the following:⁴ the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

[11] However, there is a period for submitting an application for leave to appeal a General Division decision. The Appeal Division may allow further time but not more than one year.⁵

Issue: Was the application for leave to appeal submitted more than one year after the appeal period ended?

[12] Yes, the application for leave to appeal was submitted more than one year after the appeal period ended.

[13] The General Division decision was sent to the Applicant on October 31, 2016. The Applicant received the decision by November 7, 2016, at the latest.⁶

¹ *Department of Employment and Social Development Act* (DESDA), ss 56(1) and 58(3).

² *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Murphy v Canada (Attorney General)*, 2016 FC 1208 at para 36; *Glover v Canada (Attorney General)*, 2017 FC 363 at para 22.

³ DESDA, s 58(2).

⁴ DESDA, s 58(1).

⁵ DESDA, s 57(2).

⁶ Email the Applicant sent the Tribunal on November 7, 2016.

[14] As a result, the period for submitting an application for leave to appeal ended 90 days after the date the decision was communicated to the [Applicant],⁷ therefore 90 days after November 7, 2016.

[15] The Applicant had to submit his complete application by February 5, 2017, at the latest. He filed a letter with the Tribunal on December 10, 2016, and the Tribunal treated it like an incomplete application. On December 15, 2016, the Tribunal informed the Applicant in writing that the application was incomplete and told him the information needed to complete the application. The Applicant did not respond. The Tribunal informed the Applicant by letter on December 28, 2017, that, since the information needed to complete the application had not been received, the Tribunal had closed his file.

[16] In December 2018, the Applicant tried to send the Tribunal an email. In January 2019, a Tribunal employee tried to call the Applicant but was unsuccessful.⁸

[17] The Applicant's email on December 8, 2018, contains an annotated copy of the Applicant's April 2016 letter, a completed form entitled [translation] "Appeal before the Appeal Division," and copies of documents filed with the General Division in 2016. The Tribunal accepted this document on December 8, 2018, to complete the application for leave to appeal.

[18] The appeal period ended on February 5, 2017. The Applicant submitted a complete application on December 8, 2018. The result is a delay of 669 days or 1 year, 10 months, and 1 day.

[19] The Applicant requires an extension of time to submit his application.

[20] The Appeal Division may allow further time within which an application for leave to appeal is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the applicant.⁹

⁷ DESDA, s 57(1)(b).

⁸ Telephone conversation log, January 4, 2019.

⁹ DESDA, s 57(2).

[21] The Applicant filed his application 1 year, 10 months, and 1 day after the appeal period ended. There is a prohibition in the legislation, and an extension of time beyond one year is not possible.¹⁰

[22] For these reasons, the Appeal Division cannot grant an extension of time, and the appeal has no reasonable chance of success.

[23] In addition, the Applicant wants the Tribunal to decide on [translation] “his medical condition in order to be admitted” to provincial programs across Canada. He agrees that he is ineligible for a CPP disability pension, but he is insistent that the Tribunal has the authority to complete this analysis and make this decision for all of the provinces. That is not the case. Neither the General Division nor the Appeal Division of the Tribunal have that authority.

[24] The appeal cannot succeed based on the Applicant’s grounds of appeal.

CONCLUSION

[25] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	A. T., self-represented
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¹⁰ DESDA, s 57(2).