



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. G. v Minister of Employment and Social Development*, 2019 SST 366

Tribunal File Number: AD-18-847

BETWEEN:

G. G.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time Neil Nawaz
by:

Date of Decision: April 23, 2019

DECISION AND REASONS

DECISION

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

INTRODUCTION

[2] The Applicant is a former electrician who stopped working after a series of injuries to his back. In February 2012, he applied for a Canada Pension Plan disability pension. In a letter dated April 18, 2012, the Respondent, the Minister of Employment and Social Development (Minister) refused the application because the Applicant had not made sufficient contributions to the Canada Pension Plan to establish a minimum qualifying period. The letter advised the Applicant that, if he disagreed with the Minister's decision, he could request reconsideration in writing within 90 days.

[3] In letters dated January 24, February 5, February 26, and September 10, 2013, the Applicant asked the Minister to reconsider its decision to refuse his pension application. On November 14, 2013, the Minister also refused to extend the 90-day time limit to request reconsideration.

[4] The Applicant appealed this refusal to the General Division of the Social Security Tribunal. The General Division held a hearing by videoconference and, in a decision dated October 7, 2016,¹ dismissed the appeal, finding that the Minister had made its decision in compliance with section 74.1(3) of the *Canada Pension Plan Regulations* and, in doing so, had exercised its discretion in a judicial manner.

[5] On December 13, 2018, the Applicant submitted to the Tribunal's Appeal Division an application requesting leave to appeal, well beyond the 90-day time limit set out in section 57(1)(b) of the *Department of Employment and Social Development Act* (DESDA).

¹The General Division's decision is dated "October 7, 2015." Since the record indicates that the hearing before the General Division was held on September 28, 2016, I am satisfied that the decision date contains a typographical error.

[6] Having reviewed the Applicant's submissions against the underlying record, I find that the Applicant is barred from pursuing his application for leave to appeal to the Appeal Division.

ISSUES

[7] The issues before me are as follows:

Issue 1: Should the Applicant be granted an extension of time in which to apply for leave to appeal?

Issue 2: If so, has the Applicant raised grounds of appeal under section 58(1) of the DESDA that would have a reasonable chance of success?

ANALYSIS

Issue 1: Should the Applicant be granted an extension of time in which to apply for leave to appeal?

[8] Pursuant to section 57(1)(b) of the DESDA, an application for leave to appeal must be brought to the Appeal Division within 90 days after the day on which the decision was communicated to the applicant. Under section 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 applicant.

[9] In this case, the General Division's decision was finalized on October 7, 2016. Its release was delayed for four weeks while the Minister complied with the General Division's post-hearing request² for a fresh copy of its November 13, 2013 refusal letter. On November 8, 2016, the Tribunal mailed a copy of the decision to the Applicant at his last known address. A memorandum dated December 6, 2016 indicates that the Applicant called the Tribunal to express his disagreement with the decision. A member of the Tribunal's staff noted that he had forwarded to the Applicant a form to appeal to the Appeal Division.

[10] More than two years later, the Appeal Division received the Applicant's application requesting leave to appeal. The Applicant offered no reason for submitting his application late,

² Letter to Minister from General Division dated November 2, 2016, GD7.

but he did accuse Service Canada of consistently giving him false information, and he expressed his view that he had been entitled to the Canada Pension Plan disability pension since 2010.

[11] I am satisfied that the Applicant received the General Division's decision in November 2016 and that his leave to appeal application is therefore nearly two years late. The law is strict and unambiguous for appeals that are submitted after one year. While extenuating circumstances may be considered for appeals that come after 90 days but within a year, the wording of section 57(2) of the DESDA all but eliminates scope for a decision-maker to exercise discretion once 365 days have elapsed. Whatever explanation the Applicant may have for filing his appeal late is therefore rendered irrelevant, as are other factors, such as financial need or the difficulty in negotiating the appeal process.

[12] I regret having to deny the Applicant an avenue of appeal, but I am bound to follow the letter of the law. The Applicant's submissions amount to a plea that I simply waive the filing deadline and examine his submissions on their merits, but I can only exercise such authority as is granted by the Appeal Division's enabling statute. Support for this position may be found in *Pincombe v Canada*,³ among other cases, which have held 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.

Issue 2: Has the Applicant raised grounds of appeal that would have a reasonable chance of success?

[13] As the Applicant's application for leave to appeal comes more than one year after the General Division's decision was communicated to him, I do not need to consider whether his submissions would have a reasonable chance of success on appeal.

CONCLUSION

[14] The application is refused.



Member, Appeal Division

³ *Pincombe v Canada* (A.G.) [1995] FCJ No. 1320 (FCA).

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| REPRESENTATIVE: | G. G., self-represented |
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