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

Citation: *T. C. v Minister of Employment and Social Development*, 2019 SST 521

Tribunal File Number: AD-19-346

BETWEEN:

T. C.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: May 30, 2019

Canada

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

INTRODUCTION

[2] In October 2010, the Applicant, T. C., sustained significant injuries in a motor vehicle accident. In December 2011, he 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 insufficient evidence that the Applicant's disability was "severe and prolonged," as required by the *Canada Pension Plan*.

[3] In November 2012, the Applicant submitted a second application for the CPP disability pension. This time, the Applicant was successful. In a letter dated October 15, 2013,[1] the Minister approved the Applicant's claim on reconsideration and specified a first payment date of December 2011—the maximum period of retroactivity permitted under the law.[2]

[4] The Applicant disagreed with the Minister's determination of his pension start date. On December 10, 2015, beyond the time limit set out in the *Department of Employment and Social Development Act* (DESDA), the Applicant submitted what was deemed to be an incomplete notice of appeal to the General Division of the Social Security Tribunal. The record shows that, over the next three years, the Applicant made various intermittent attempts to cure the alleged defects in his appeal. In January 2019, the Tribunal, which had previously closed his file, declared the appeal complete and referred the matter for consideration by a General Division member.

[2] The General Division elected not to hold an oral hearing and decided the matter based on a review of the existing documentary record. In a decision dated February 18, 2019, it found that the Applicant's appeal was brought more than one year after he had received the reconsideration

[1] GD2-49.
[2] Under section 42(2)(b) of the *Canada Pension Plan*, a person cannot be deemed disabled more than 15 months before the Minister received the application for a disability pension. According to section 69, payments start four months after the deemed date of disability.

letter. As a result, pursuant to section 52(2) of the DESDA, the General Division declined to grant an extension of time to appeal.

[3] On May 13, 2019, The Applicant filed an application for leave to appeal with the Tribunal's Appeal Division, alleging that the General Division had erred in arriving at its decision. In a letter accompanying the application, he explained that his appeal to the General Division was late because he has been incapacitated since October 2010 and is unable to carry out tasks in a timely manner. He also enclosed a personal narrative, part of a psychiatric report,[3] and correspondence from the Canada Revenue Agency.[4]

ISSUE

[4] According to section 58(1) of the DESDA, there are only three grounds of appeal to the Appeal Division: The General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material. An appeal may be brought only if the Appeal Division first grants leave to appeal,[5] but the Appeal Division must first be satisfied that the appeal has a reasonable chance of success.[6] The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.[7]

[5] I must decide whether the Applicant has presented an arguable case that falls within one or more of the grounds set out in section 58(1) of the DESDA. In particular, I must consider whether the General Division erred in refusing the Applicant an extension of time in which to file his appeal.

ANALYSIS

[6] I have reviewed the record, and I see no arguable case for any ground of appeal.

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[3] Undated report by Dr. Stephen Anderson, AD1-4.
[4] Letter dated August 30, 2017, AD1-19.
[5] DESDA at s. 56(1) and 58(3).
[6] *Ibid*. at s. 58(1).
[7] *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[7] Pursuant to section 52(1)(b) of the DESDA, an appeal must be brought to the General Division within 90 days after the day on which the decision was communicated to the claimant. Under section 52(2), the General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the day on which the decision is communicated to the claimant.

[8] The General Division found that the notice of appeal was submitted to the Tribunal more than one year after receipt of the Minister's reconsideration letter, and I can see no arguable case that, in doing so, it relied on an erroneous finding of fact, misapplied the law, or treated the Applicant unfairly. CPP claims are application-driven and benefits that flow from a successful second application cannot be backdated to an unsuccessful first, even if both applications involve the same set of injuries.

[9] As the General Division noted, the Applicant acknowledged that he received the Minister's reconsideration letter on October 20, 2013.[8] Even if one assumes that the Applicant's appeal was complete as early as December 10, 2015, it still came more than two years year after the Minister's approval letter. For appeals submitted more than one year after reconsideration, the law is strict and unambiguous. Section 52(2) of the DESDA states that *in no case* may an appeal be brought more than one year after the reconsideration decision was communicated to a claimant. While extenuating circumstances may be considered for appeals that come after 90 days but within a year, the wording of section 52(2) all but eliminates scope for a decision-maker to exercise discretion once the year has elapsed. The Applicant's explanation for filing his appeal late is therefore rendered irrelevant, as are other factors, such as his financial need or the merits of his incapacity claim.

[10] It is indeed unfortunate that missing a filing deadline may have cost the Applicant an opportunity to appeal, but the General Division was bound to follow the letter of the law, and so am I. The Applicant may regard this outcome as unfair, but I can exercise only such jurisdiction as granted by the Appeal Division's enabling statute. Support for this position may be found in *Tucker v Canada*,[9] among other cases, which have held that an administrative tribunal is not a

[8] Applicant's email dated December 21, 2018, GD1D.
[9] *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.

court but a statutory decision-maker and therefore not empowered to provide any form of equitable relief.

CONCLUSION

[11] In my view, the General Division did not base its decision to deny an extension of time to appeal on an erroneous finding of fact, nor did it err in law or breach a principle of natural justice. Since I see no reasonable chance of success on the grounds of appeal put forward, the application for leave to appeal is refused.

Member, Appeal Division

REPRESENTATIVE:	T. C., self-represented