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

Citation: *R. B. v Minister of Employment and Social Development*, 2019 SST 588

Tribunal File Number: AD-19-378

BETWEEN:

R. B.

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: June 14, 2019

Canada

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

INTRODUCTION

[2] The Applicant, R. B., is a former truck and school bus driver who stopped working after sustaining multiple injuries in a 2009 motorcycle accident. In October 2010, he applied for a Canada Pension Plan (CPP) disability pension. The Respondent, the Minister of Employment and Social Development (Minister) refused the application, initially and on reconsideration, because it found that the Applicant's disability was not "severe and prolonged," as defined by the *Canada Pension Plan.* The Minister's reconsideration letter, dated April 18, 2017, advised the Applicant that, if he disagreed with the Minister's decision, he had the right to file an appeal with the General Division of the Social Security Tribunal within 90 days.

[3] More than a year later, on June 22, 2018, the Applicant did file an appeal, but he submitted it to the Minister, not the Tribunal. On July 31, 2018, the Minister advised the Applicant by mail that he should direct his appeal to the Tribunal, as indicated in the reconsideration letter. The Applicant sent a notice of appeal to the Tribunal on August 10, 2018, but it was deemed incomplete. The Tribunal asked the Applicant for missing items of information, including a copy of the reconsideration letter, his social insurance number, his telephone number, and his grounds for appeal. The Applicant did not submit this information until March 2019.

[4] The General Division then considered the matter by way of a documentary review. In a decision dated May 29, 2019, the General Division dismissed the appeal because it was brought more than one year after the Applicant had received the Minister's reconsideration letter.

[5] On June 3, 2019, the Applicant submitted an application requesting leave to appeal to the Tribunal's Appeal Division. He insisted that he had provided the required information when

asked and had even gone as far as to follow up with the Tribunal to make sure it had been received. He asked for the General Division's decision to be reopened.

[6] Having reviewed the Applicant's submissions against the underlying record, I have concluded that the Applicant's reasons for appealing have no reasonable chance of success.

ISSUE

[7] According to section 58(1) of the *Department of Employment and Social Development Act* (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,[1] but the Appeal Division must first be satisfied that the appeal has a reasonable chance of success.[2] The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.[3]

[8] I must decide whether the Applicant has presented an arguable case that falls into 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

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

[10] Under 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 appellant. 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 was communicated to the appellant.

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[1] DESDA at ss 56(1) and 58(3).
[2] *Ibid*. at s 58(1).
[3] *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[11] The General Division found that the notice of appeal was submitted to the Tribunal more than one year after the Applicant received 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.

[12] In his correspondence, the Applicant has never explicitly denied that his notice of appeal was submitted more than one year after he received the reconsideration letter. Indeed, the record indicates that the reconsideration letter was mailed to the Applicant on April 18, 2017 and that his misdirected appeal was not filed until more than one year later—on June 22, 2018. The Applicant insists, in general terms, that he complied with deadlines and filed whatever information was requested of him, but the General Division reviewed the evidence and saw nothing to indicate that he had filed, or attempted to file, any document with either the Minister or the Tribunal until more than 14 months after the reconsideration letter was issued. The Applicant has not explained how the General Division erred in making this finding.

[13] 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 the appellant. 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, including the merits of his disability claim.

[14] It is 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 *Pincombe v Canada*,[4] among other cases, which have held that an administrative tribunal is not a court but a statutory decision-maker and therefore not empowered to provide any form of equitable relief.

[4] *Pincombe v Canada (Attorney General)*, [1995] FCJ No. 1320 (FCA).

CONCLUSION

[15] In my view, the General Division did not base its decision to deny the Applicant an extension to appeal on an erroneous finding of fact, nor did it err in law or breach a principle of natural justice. As 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:	R. B., self-represented