



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Z. Y. v Minister of Employment and Social Development*, 2019 SST 831

Tribunal File Number: AD-19-500

BETWEEN:

Z. Y.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time Valerie Hazlett Parker
by:

Date of Decision: September 5, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] Z. Y. (Claimant) came to Canada in 2001. She worked and contributed to the Canada Pension Plan from 2005 to 2009. In 2014, the Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled by a number of conditions including weakness in both legs, low back pain, depression, insomnia, and post-traumatic stress disorder.

[3] The Minister of Employment and Social Development refused the application because it decided that the Claimant was not disabled under the *Canada Pension Plan*. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. The Claimant appealed this decision to the Tribunal's Appeal Division. The Appeal Division allowed the appeal because it decided that the General Division had made an error in law and had based its decision on an erroneous finding of fact under the *Department of Employment and Social Development Act* (DESD Act). It referred the matter back to the General Division for reconsideration.

[4] The General Division again dismissed the Claimant's appeal because it decided that she did not become disabled during the relevant time. The Claimant now requests leave to appeal this decision to the Tribunal's Appeal Division. The Claimant's request for leave to appeal is late. An extension of time to file the appeal is refused because the Claimant did not provide a reasonable explanation for her delay and the appeal does not have a reasonable chance of success.

ISSUES

[5] Was the application to the Appeal Division filed late?

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

ANALYSIS

[7] The DESD Act governs the Tribunal's operation. It states that an appeal to the Tribunal's Appeal Division must be filed within 90 days of when the General Division decision was communicated to them.¹ This time may be extended, but in no case can an application be made to the Appeal Division more than one year after the General Division decision was communicated to a claimant.²

Issue 1: Is the appeal late?

[8] In this case, the General Division decision is dated July 5, 2018. The Claimant does not say when the decision was communicated to her. However, the *Social Security Tribunal Regulations* state that a decision is deemed to have been communicated ten days after it was mailed to a claimant.³ Therefore the decision is deemed to have been communicated to the Claimant on July 15, 2018.

[9] The Application to the Appeal Division was filed with the Tribunal on July 16, 2019. This is more than 90 days after the General Division decision was communicated to the Claimant. Therefore, it is late.

Issue 2: Should time to file the appeal be extended?

[10] I must decide whether the time to file the application should be extended. The Federal Court instructs that to make this decision I must consider the following factors:

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

¹ DESD Act s. 52(1)

² DESD Act s. 52(2)

³ *Social Security Tribunal Regulations* s. 19

d) Does the matter have a reasonable chance of success.⁴

In addition, 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.⁵

[11] I am satisfied that the Claimant had a continuing intention to appeal in this case. She writes in the Application to the Appeal Division that she always intended to appeal, and that she took steps to obtain further medical evidence to support her case. This demonstrates her intention.

[12] I am not satisfied, however, that the Claimant has a reasonable explanation for her delay. The Claimant could have filed the Application to the Appeal Division sooner than she did. Medical evidence is not required for an appeal to the Appeal Division. In fact, new evidence is not ordinarily permitted on appeal.⁶ New medical evidence does not point to the General Division having made an error under the DESD Act.

[13] In addition, the Claimant has previously appealed to the Appeal Division and therefore should know what is required in order to be granted leave to appeal, and that new medical evidence is not required.

[14] There is nothing before me that speaks to the issue of whether a party would be prejudiced if time to file the appeal were extended.

[15] I place the greatest weight on the fact that the Claimant has not presented a ground of appeal that falls under the DESD Act and on which the appeal has a reasonable chance of success. The DESD Act sets out only three grounds of appeal that I can consider: that the General Division failed to observe a principle of natural justice, 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.⁷ The presentation of additional medical evidence, and repetition

⁴ *Canada (Minister of Human Resources Development) v. Gatellaro*, 2005 FC 883. The decision refers to the appeal disclosing an arguable case. Legally, this is the same as the appeal having a reasonable chance of success.

⁵ *Canada (Attorney General) v. Larkman*, 2012 FCA 204

⁶ *Canada (Attorney General) v. O'Keefe*, 2016 FC 503

⁷ DESD Act s. 58(1)

of the Claimant's legal position are not grounds of appeal that can be considered. The appeal therefore does not have a reasonable chance of success.

[16] It is not in the interests of justice to extend time to file an application to the Appeal Division when the appeal has no reasonable chance of success.

CONCLUSION

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

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	Z. Y., Self-represented
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