



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. H. v Minister of Employment and Social Development*, 2019 SST 1444

Tribunal File Number: AD-19-817

BETWEEN:

B. H.

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: December 19, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] B. H. (Claimant) completed high school as well as medical secretary and massage therapy programs in college. She has worked in a number of jobs. The Claimant last worked part-time as a massage therapy instructor. She stopped working in 2012 because of her medical conditions. She applied for a Canada Pension Plan disability pension and claimed that she was disabled by a number of conditions, including fibromyalgia, anxiety, depression, pain, headaches, fatigue and hypothyroidism.

[3] The Minister of Employment and Social Development refused the application because it decided that the Claimant did not have a severe and prolonged disability before the end of her minimum qualifying period (the date by which a person must be found to be disabled in order to receive the disability pension). The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal for the same reason.

[4] The Claimant applied to the Tribunal's Appeal Division late. The time to file the application is not extended because the Claimant has not provided a reasonable explanation for her delay and the appeal does not have a reasonable chance of success.

ISSUES

[5] Was the appeal filed late?

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

ANALYSIS

Was the application filed late?

[7] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It states that an application to the Tribunal's Appeal Division must be made within 90 days of the General Division decision being communicated to the person who applies.¹ The General Division decision is dated July 9, 2019. The *Social Security Tribunal Regulations* say that a decision is deemed to be communicated to a person ten days after it was mailed to them.² Therefore, the Claimant is deemed to have received the General Division decision on July 19, 2019.

[8] The Claimant filed the Application to the Appeal Division with the Tribunal on November 26, 2019. This is more than 90 days after July 19, 2019. Therefore, the application was filed late.

Should time to file the application be extended?

[9] The DESD Act also says that the time to file an application can be extended.³ The Federal Court instructs that a number of factors should be considered when deciding whether to extend time to file an application. They are

- a) Whether there is a continuing intention to pursue the application;
- b) Whether there is a reasonable explanation for the delay;
- c) Whether there is any prejudice to the other party in allowing the extension; and
- d) Whether the matter has a reasonable chance of success.⁴

¹ DESD Act s. 52(1)

² *Social Security Tribunal Regulation* s. 19(a)

³ DESD Act s. 52(2)

⁴ *Canada (Minister of Human Resources Development) v. Gatellaro*, 2005 FC 883

[10] 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] The Claimant says that the application was filed late because she was waiting for an appointment with a rheumatologist. However, she did not provide any evidence from this doctor, nor any argument about why such information would be important to her appeal. Therefore, this is not a reasonable explanation for her delay. In addition, this does not establish that she had a continuing intention to appeal.

[12] There is nothing before me on which I can decide whether the Minister of Employment and Social Development would be prejudiced if this appeal were to proceed.

[13] For reasons below, the appeal does not have a reasonable chance of success. The DESD Act says that only certain grounds of appeal (reasons for appealing) can be considered. They are that the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or
- d) based its decision on an important factual error.⁶

[14] The Claimant did not present any such grounds of appeal in her application. The Tribunal wrote to the Claimant, explained what grounds of appeal could be considered and asked her to provide this information. The Claimant did not respond to this letter.

[15] The Claimant says that leave (permission) to appeal should be granted because she has had fibromyalgia and associated symptoms since she stopped working in 2012, and she asks that the Appeal Division again review her case. It is not for the Appeal Division to reweigh the

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

⁶ This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

evidence to reach a different conclusion than did the General Division.⁷ Even if the Claimant had provided evidence from her rheumatologist, this would not necessarily point to the General Division having made an error under the DESD Act.

[16] The appeal does not have a reasonable chance of success.

[17] I place the greatest weight on the fact that the appeal does not have a reasonable chance of success. It is not in the interests of justice to extend time to file an appeal when it does not have a reasonable chance of success on its merits.

CONCLUSION

[18] An extension of time to apply for leave to appeal is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	B. H., Self-represented
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⁷ Simpson v. Canada (Attorney General), 2012 FCA 82