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

Citation: *G. G. v Minister of Employment and Social Development*, 2020 SST 377

Tribunal File Number: AD-20-95

BETWEEN:

G. G.

Appellant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: April 29, 2020

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Claimant is a former truck driver who stopped working in November 2014 after sustaining a work-related back injury. In July 2017, he applied for a Canada Pension Plan (CPP) disability pension, claiming that he was no longer capable of substantially gainful employment.

[3] The Minister refused the application because it found that the Claimant's disability was not severe and prolonged, as defined by the *Canada Pension Plan.* The Minister's reconsideration letter, dated June 20, 2018,[1] advised the Claimant 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.

[4] More than a year later, on September 17, 2019,[2] the Claimant did attempt to file an appeal, but he submitted it to the Minister, not the Tribunal. On October 4, 2019,[3] the Minister advised the Claimant by mail that he should direct his appeal to the Tribunal, as indicated in the reconsideration letter. On October 16, 2019, the Claimant sent an information package to the Tribunal and, although it did not include the correct form, it was accepted as a complete notice of Appeal to the General Division.

[5] In a decision dated January 12, 2020, the General Division summarily dismissed the Claimant's appeal because it was received more than 365 days after the Minister's reconsideration decision and therefore had no reasonable chance of success.

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[1] GD2-8.
[2] GD1-1.
[3] GD2-7.

THE PARTIES' SUBMISSIONS

[6] On February 12, 2020, the Claimant submitted a notice of appeal to the Tribunal's Appeal Division. He alleged that the General Division ignored medical information proving that he was disabled. He said that his appeal to the General Division was late because he was overwhelmed with severe depression and anxiety.

[7] Under the *Social Security Tribunal Regulations*, the parties have 45 days, after a notice of appeal has been filed, in which to make additional submissions to the Appeal Division. On March 16, 2020, the Minister submitted a letter recommending that the Claimant's appeal be dismissed because it had no reasonable chance of success.[4] The Minister argued that the General Division had not erred in finding that it was statute-barred from considering the Claimant's appeal.

[8] On March 17, 2020, a Tribunal staff member left a telephone message with the Claimant letting him know that the Tribunal's mailroom had been closed due to the COVID-19 pandemic.[5] The staff member asked the Claimant whether he had an email address or fax number to which the Tribunal could forward him documents.

[9] One week later, the Claimant called the Tribunal back. He told a staff member that he did not have an email address or access to his own fax machine. The staff member read the Minister's March 16 letter to him, and the Claimant indicated that he wanted additional time in which to make submissions.[6]

[10] On March 27, 2020, the Tribunal extended the submission deadline to April 24, 2020.[7] News of this extension was communicated to the Claimant by telephone.[8] To date, the Tribunal has not received any further written submissions from the Claimant.

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[4] AD2.
[5] Tribunal's telephone memo dated March 17, 2020.
[6] Tribunal's telephone memo dated March 25, 2020.
[7] Later documented in the Appeal Division's endorsement letter dated March 30, 2020, AD3.
[8] Tribunal's telephone memo dated March 27, 2020.

[11] I have decided to proceed with this hearing because I am satisfied that the Claimant received notice of the revised submissions deadline.

[12] I have decided that this case does not require an oral hearing. The appeal is proceeding based on the written record because, in my view, there are no gaps in the file and there is no need for clarification.[9]

[13] Having reviewed the record and the parties' written submissions, I have concluded that the Claimant's reasons for appealing do not justify overturning the General Division's decision.

ISSUES

[14] According to the *Department of Employment and Social Development Act* (DESDA), there are only three grounds of appeal to the Appeal Division. A claimant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important error of fact.[10]

[15] In this appeal, I had to decide the following questions:

Issue 1: Did the General Division apply the correct test for a summary dismissal?

Issue 2: Did the General Division err when it refused the Claimant an extension of time in which to file his appeal?

ANALYSIS

Issue 1: Did the General Division apply the correct test for a summary dismissal?

[16] I am satisfied that the General Division used the appropriate mechanism to decide the Claimant's appeal. In paragraph 2 of its decision, and again in paragraph 11, the General Division cited section 53(1) of the DESDA, correctly stating that the provision permitted it to

[9] Under section 53(3) of the *Department of Employment and Social Development Act* (DESDA), this case does not require leave to appeal, because it involves a summary dismissal from the General Division.
[10] The formal wording for these grounds of appeal is found in section 58(1) of the DESDA.

summarily dismiss an appeal that had no reasonable chance of success. However, I acknowledge that it is insufficient to simply cite legislation without properly applying it to the facts.

[17] The decision to summarily dismiss an appeal relies on a threshold test. It is not appropriate to consider the case on the merits in the parties' absence and then find that the appeal cannot succeed. In *Fancy v Canada*,[11] the Federal Court of Appeal determined that a reasonable chance of success is akin to an arguable case at law. The Court also determined that the threshold for summary dismissal is high.[12] It has to be "plain and obvious" on the record that the appeal is bound to fail. The question is *not* whether the appeal must be dismissed after considering the facts, the law, and the parties' arguments. Rather, the question is whether the appeal is destined to fail regardless of what might be submitted at a hearing.

[18] Here, the record shows that the Claimant did not submit an appeal to the General Division until more than 365 days after he received the Minister's reconsideration decision. The General Division correctly applied a high threshold when it found that the appeal had "no reasonable chance of success," because the Appellant's appeal came well after the "hard" deadline imposed by the relevant legislation. For reasons that I will explain more fully below, it was plain and obvious on the record that the Claimant's submissions were bound to fail.

Issue 2: Did the General Division err when it refused the Claimant an extension of time?

[19] Under section 52(1)(b) of the DESDA, an appeal must be filed with 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 to file an appeal, but in no case can it be filed more than one year after the day on which the decision was communicated to the claimant.

[20] The General Division found that the notice of appeal was submitted to the Tribunal more than one year after the Claimant received the Minister's reconsideration letter, and I can see no

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[11] *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[12] *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; and *Breslaw v Canada (Attorney General)*, 2004 FCA 264.

arguable case that, in doing so, it relied on an erroneous finding of fact, misapplied the law, or treated the Claimant unfairly.

[21] The Claimant has never denied that his notice of appeal was submitted more than one year after he received the Minister's reconsideration letter. Indeed, the record indicates that the reconsideration letter was mailed to the Claimant on June 20, 2018 and that his misdirected appeal was not filed until more than one year later—on September 17, 2019. The General Division reviewed the evidence and saw nothing to indicate that the Claimant had filed, or attempted to file, any document with either the Minister or the Tribunal until 15 months after the reconsideration letter was issued.

[22] 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 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 Claimant's explanation for filing his appeal late is therefore rendered irrelevant, as are other factors, including the merits of his disability claim.

[23] It is unfortunate that missing a filing deadline may have cost the Claimant an opportunity to appeal, but the General Division was bound to follow the letter of the law, and so am I. the Claimant 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*,[13] 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.

CONCLUSION

[24] In coming to its decision, the General Division correctly applied a high threshold, concluding that, because it was filed more than a year after the Minister's reconsideration letter, the appeal had no reasonable chance of success. The General Division was within its authority to

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

summarily dismiss the appeal because it was plain and obvious on the record that the Claimant's appeal was bound to fail.

[25] The appeal is therefore dismissed.

Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVES:	G. G., self-represented Tiffany Glover, for the Respondent