



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MW v Minister of Employment and Social Development*, 2020 SST 913

Tribunal File Number: AD-20-766

BETWEEN:

M. W.

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: October 23, 2020

DECISION AND REASONS

DECISION

[1] An extension of time to apply for leave to appeal is refused. This file will be closed.

OVERVIEW

[2] X completed Grade 11 and earned a hairdressing certificate. She worked as a hairdresser, and in physical labour. The Claimant injured her back at work. She has ongoing back pain and problems with her left leg. Surgery did not improve her condition.

[3] The Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled by back and leg pain. The Minister of Employment and Social Development refused the application. It decided that the Claimant's disability was not severe. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that there was not enough evidence to prove that the Claimant's disability was severe on or before the date of the hearing.

[4] The Claimant now requests leave (permission) to appeal the General Division's decision to the Tribunal's Appeal Division. However, the application to the Appeal Division is late. An extension of time to file the application is refused.

PRELIMINARY MATTERS

[5] The Appeal Division scheduled a Case Conference so that the parties could discuss this matter, and relevant legal and jurisdictional issues could be explained before this decision was made. The Claimant did not call in to the Case Conference. To ensure that the Claimant had the opportunity to participate in the conference, it was rescheduled. After receiving notice of the second Case Conference date and time, the Claimant wrote to the Tribunal and said that she was not available then. She did not say when she was available. The Claimant failed to respond to voicemail messages and emails that inquired about her availability for the conference. Consequently, the Case Conference was not held.

ISSUE

[6] Is the application for permission to appeal late?

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

ANALYSIS

[8] An application to the Tribunal's Appeal Division must be filed within 90 days of when the General Division decision is communicated to a claimant.¹ The General Division decision is dated April 30, 2020. It was mailed to her. The Claimant did not say when she received the decision. However, I take judicial notice that documents sent within Canada by regular mail are received within 10 days of being mailed. Therefore, it would have been received by May 11, 2020.

[9] The application to the Appeal Division was filed with the Tribunal on August 25, 2020. This is more than 90 days after May 11th. Therefore, the appeal is filed late.

[10] The Appeal Division can extend the time to file an application.² The following factors are to be considered when doing so:

- a) Is there a continuing intention to pursue the application;
- b) Is there is a reasonable explanation for the delay;
- c) Is there is any prejudice to the other party in allowing the extension; and
- d) Does the appeal have a reasonable chance of success?³

[11] 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

¹ *Department of Employment and Social Development Act* s. 57(1)(b)

² *Department of Employment and Social Development Act*, S. 57(2)

³ *Canada (Minister of Human Resources Development) v. Gatellaro*, 2005 FC 883

justice be served.⁴

[12] The Claimant has not provided any information upon which the Appeal Division can decide whether she had a continuing intention to appeal, nor any explanation for her delay in making the application. There is also no information about whether the Minister would be prejudiced if the appeal were to proceed. Therefore, these factors cannot be assessed.

[13] I must also consider whether the appeal has a reasonable chance of success. This is the same legal test that must be met to be granted leave to appeal to the Appeal Division. There are only specific reasons for appealing that the Appeal Division can consider. They are whether 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.⁵

So, to be granted leave to appeal, a claimant must present at least one ground of appeal that falls within these categories and on which the appeal has a reasonable chance of success.

[14] The Claimant did not provide any reasons for appealing in the application to the Appeal Division. She later wrote that she was presenting additional medical information because the General Division decision states that it suspected that much of the Claimant's WorkSafe BC record was not presented.⁶ She included a very large number of documents from WorkSafe BC.⁷

[15] However, this does not point to the General Division having made one of the errors that the Appeal Division can consider. The presentation of new evidence also does not establish that

⁴ *Canada (Attorney General) v. Larkman*, 2012 FCA 204

⁵ This paraphrases the grounds of appeal set out in s. 58(1) of the *Department of Employment and Social Development Act*

⁶ General Division decision at para. 15

⁷ AD1C to AD1R

the appeal has a reasonable chance of success.

[16] I place the greatest weight on this. It is not in the interest of justice to extend time to file an application to the Appeal Division if the appeal has no reasonable chance of success on its merits.

CONCLUSION

[17] An extension of time to apply for leave to appeal is refused for these reasons. This file will now be closed.

[18] The Claimant's minimum qualifying period is in the future. Therefore, she could make another disability pension application in the future.

[19] The Claimant may also make an application to have the General Division decision rescinded or amended based on new material facts, although it is difficult to meet the legal test to succeed on this.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	M. W., Self-represented
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