



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *VS v Minister of Employment and Social Development*, 2021 SST 78

Tribunal File Number: AD-21-24

BETWEEN:

V. S.

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: March 1, 2021

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] V. S. (Claimant) is a registered nurse. She worked for many years until 2014, and again in 2018. The Claimant applied for a Canada Pension Plan disability pension and says that she is disabled by vision loss and bleeding in both eyes, which has caused numerous limitations. She also has high blood pressure and a thyroid condition.

[3] The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that the Claimant was capable regularly of pursuing a substantially gainful occupation at the end of her minimum qualifying period (MQP). This is the date by which a claimant must prove that they are disabled to receive the disability pension. The Claimant's MQP is December 31, 2016.

[4] The Claimant requested leave (permission) to appeal to the Tribunal's Appeal Division late. An extension of time to do this is refused because the Claimant did not show a continuing intention to appeal and the appeal does not have a reasonable chance of success.

PRELIMINARY MATTER

[5] The Claimant did not provide any information about why her application to the Appeal Division was late when she requested leave to appeal. The Tribunal wrote to the Claimant, explained what information was needed to decide whether to extend time to make the application, and requested that the Claimant provide this information. When the Claimant asked for additional time to do so, it was given to her. The Claimant's response is considered in making this decision.

ISSUES

[6] Is the application to the Appeal Division late?

[7] If so, should an extension of time to file the application be granted?

ANALYSIS

The application is late

[8] An application to the Tribunal's Appeal Division must be made within 90 days of when the General Division decision is communicated to the claimant.¹ The General Division decision is dated July 23, 2020. The Claimant first contacted the Tribunal about the appeal in writing on January 25, 2021. This is more than 90 days after the decision would have been communicated to her.

[9] The Claimant says that she contacted the Appeal Division by telephone within the time permitted to file an appeal. However, there is no record of any such contact in the Tribunal file. Even if there were, this would not be considered an application to the Appeal Division.

[10] Therefore, the application is late.

An extension of time to file an application is refused

[11] The Appeal Division may extend time for an application to be filed.² The following factors must be considered and weighed when deciding whether to grant an extension of time:

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

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

² Section 57(2) of the *Department of Employment and Social Development Act*.

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

[12] The weight to be given to each of these factors may differ in each case. In some cases, different factors will be relevant. The overriding consideration is that the interests of justice be served.⁴

[13] The Claimant says that her application is late because of her poor health and difficult circumstances. I accept that this makes it harder for the Claimant to accomplish tasks. However, this does not explain why the application was not made on time, when she was able to make it at a later date.

[14] The Claimant has also not provided any information that shows that she had a continuing intention to appeal. After receiving the General Division decision, she did not contact the Tribunal until she requested leave to appeal. She provided no explanation for her failure to do so.

[15] There is no information about any prejudice to the Minister if this matter proceeds.

[16] I place the most weight on the fact that the appeal does not have a reasonable chance of success. This is the same legal test that must be met for leave to appeal to be granted.⁵ It is not in the interests of justice to extend time for an application to be filed when it does not have a reasonable chance of success on its merits.

[17] An appeal to the Tribunal's Appeal Division is not a rehearing of the original claim. Instead, the Appeal Division can only decide 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.⁶

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

⁵ See section 58(2) of the *Department of Employment and Social Development Act*, which says that the Appeal Division must refuse leave to appeal if the appeal does not have a reasonable chance of success.

⁶ This paraphrases the grounds of appeal set out in section 58(1) of the *Department of Employment and Social Development Act*.

[18] The Tribunal must provide a fair process. This means that all parties must have the opportunity to present their legal case to the Tribunal, to know and answer the other party's legal case, and to have a decision made by an independent and unbiased decision maker.

[19] The Claimant says that the General Division failed to provide a fair process because it relied on a document that she did not have a chance to comment on. However, she did not specify what document this is. In addition, all parties received copies of all the documents that were filed with the Tribunal before the General Division hearing. The Claimant was not restricted in what she said at the hearing, and she could have responded to documents filed by the Minister at that time. Therefore, the appeal does not have a reasonable chance of success on this basis.

[20] The Claimant also argues that the General Division made an important factual error when it stated that she left work because of a workplace issue.⁷ She says that she stopped work in 2014 because of her health. In order to succeed on appeal on this basis, the Claimant would have to prove three things about this finding of fact:

- a) The finding of fact was erroneous (in error).
- b) The finding was made perversely, capriciously, or without regard for the material that was before the General Division; and
- c) The decision was based on this finding of fact.⁸

[21] However, the General Division decision was not based on why the Claimant stopped working in 2014. It was based on other facts, including the Claimant's testimony that she was actively looking for work until 2018, and that there was no health condition that prevented her from working at that time.⁹ The decision also analyzes the medical evidence and concludes that there was no medical condition that prevented the Claimant from working before the end of the MQP.¹⁰ The appeal does not have a reasonable chance of success on this basis.

⁷ General Division decision at para 7.

⁸ Section 58(1)(c) of the *Department of Employment and Social Development Act*.

⁹ General Division decision at para 8.

¹⁰ General Division decision at para 14.

[22] I have reviewed the General Division decision and the written record. The General Division did not overlook or misconstrue any important information.

[23] The Claimant also requests leave to appeal because she is in strained financial circumstances. However, this is not a ground of appeal that can be considered.

CONCLUSION

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

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	V. S., self-represented
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