



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *DT v Minister of Employment and Social Development*, 2022 SST 1698
Tribunal File Number: GP-22-1730

BETWEEN:

D. T.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Adam Picotte

DATE OF DECISION: November 9, 2022

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for a *Canada Pension Plan* disability pension. The Respondent denied the application initially and, in a decision letter dated June 6, 2022, denied the application upon reconsideration. The Appellant appealed that decision to the Tribunal on October 24, 2022, beyond the 90-day limit set out in paragraph 52(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

ISSUE

[2] The Tribunal must decide whether to allow an extension of time for the Appellant to appeal pursuant to subsection 52(2) of the DESD Act.

ANALYSIS

[3] The Tribunal finds that the appeal was filed after the 90-day limit. The Respondent's reconsideration decision was dated June 6, 2022. The Tribunal assumes that the reconsideration decision was sent to the Appellant by mail. The Tribunal takes judicial notice of the fact that mail in Canada is usually received within 10 days. The Tribunal therefore finds that the reconsideration decision was communicated to the Appellant by June 16, 2022.

[4] In accordance with paragraph 52(1)(b) of the DESD Act, the Appellant had until September 14, 2022 to file an appeal.

[5] The Appellant filed an appeal on October 24, 2022, outside the 90-day limit.

[6] In deciding whether to allow further time to appeal, the Tribunal considered and weighed the four factors set out in *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883. The overriding consideration is that the interests of justice be served (*Canada (Attorney General) v. Larkman*, 2012 FCA 204).

Continuing Intention to Pursue the Appeal

[7] The Appellant submitted a second request for reconsideration to the Minister on July 22, 2022. This request demonstrated a continuing intention to pursue the appeal.

[8] The Tribunal finds that the Appellant had a continuing intention to pursue the appeal.

Arguable Case

[9] The Appellant claims that she could no longer work because of her medical conditions as of December 1998. She describes her medical conditions as fibromyalgia.

[10] The Appellant pursued this to the Review Tribunal and her appeal was dismissed on July 5, 2007. In December 2008 the Appellant filed an application to re-open the Review Tribunal decision. This too was dismissed. The Appellant further pursued this on a judicial review to the Federal Court of Canada. Again this was dismissed. In November 2016, the Appellant filed a new appeal with the Social Security Tribunal. The matter was dismissed on the basis that it was res judicata. Res judicata means that the matter has already been decided by a court and may not be pursued again.

[11] Because there has already been a final decision on this issue and the matter has already been dismissed on the basis of it being res judicata. I have determined that the Appellant does not have an arguable case.

Reasonable Explanation for the Delay

[12] Upon reviewing the file materials, it is clear that the Appellant intended to pursue the appeal but sent in a further request for reconsideration. I am satisfied that she had a reasonable explanation for the delay.

[13] The Tribunal finds that the Appellant provided a reasonable explanation for the delay in filing the appeal.

Prejudice to the Other Party

[14] The Respondent's interests do not appear to be prejudiced given the short period of time that has lapsed since the reconsideration decision. The Minister's ability to respond, given its resources, would not be unduly affected by an extension of time to appeal.

CONCLUSION

[15] In consideration of the *Gattellaro* factors and in the interests of justice, the Tribunal refused an extension of time to appeal pursuant to subsection 52(2) of the DESD Act.

[16] I make this decision primarily on the basis that there is no arguable case on appeal. The fact the Appellant's matter is res judicata is fatal to her ability to pursue this matter any further. As a result, I am not allowing the late appeal to proceed.

Adam Picotte
Member, General Division - Income Security