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

Citation: *I. S. v Canada Employment Insurance Commission*, 2019 SST 372

Tribunal File Number: AD-19-119

BETWEEN:

I. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Valerie Hazlett Parker

Date of Decision: April 26, 2019

of when the General Division decision is communicated to the Claimant.[1] The General Division decision is dated July 23, 2018. The *Social Security Tribunal Regulations* state that a document is deemed to have been received by a person ten days after it was mailed to them.[2] Therefore, the Claimant is deemed to have received the General Division decision in early August 2018. The Claimant's application to the Appeal Division was received by the Tribunal on February 12, 2019,[3] which is far more than 30 days after August 2018. In this application the Claimant also acknowledges that it was made late. Therefore, the application was filed late.

Issue 2: Should time to file the application be extended?

[7] The DESD Act says that the Appeal Division can extend the time for an application to be made.[4] The Federal Court instructs that the following factors should be considered when deciding whether to extend time:

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 matter disclose an arguable case?[5]

[8] 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.[6] In this case, the Claimant's application provided an explanation for filing the appeal late, being that his house burned down. This is a reasonable explanation for the delay. I am also satisfied that the Claimant had a continuing intention to appeal because the entirety of the delay is explained by this situation.

[9] There is nothing in the written record regarding any prejudice to any party, so I cannot

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[1] DESD Act s. 57(1)(a)
[2] Social Security Tribunal Regulations s. 19
[3] AD1
[4] DESD Act s 57(2)
[5] Canada (Minister of Human Resources Development) v. Gatellaro, 2005 FC 883
[6] Canada (Attorney General) v. Larkman, 2012 FCA 204

make any finding regarding this.

[10] Legally, whether there is an arguable case on appeal is the same as whether the appeal has a reasonable chance of success. This is the test that must be met to be granted leave to appeal under the DESD Act.[7] This Act also sets out only three grounds of appeal that can be considered. They are that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.[8] Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal that falls under the DESD Act and on which the appeal has a reasonable chance of success.

[11] The Claimant checked the box in the application form to indicate that the appeal was based on the General Division having made an error in law. However, the Claimant did not set out what that alleged error was. The Tribunal wrote to the Claimant, explained what grounds of appeal the Appeal Division can consider, and asked that he provide grounds of appeal under the DESD Act. The Claimant requested additional time to provide this. He was granted additional time, but has not provided any further information to the Tribunal.

[12] I have read the General Division decision and the written record. Nothing suggests that General Division made any error in law. The General Division did not overlook or misconstrue any important information; it did not base its decision on any erroneous findings of fact. There is no suggestion that the General Division failed to observe a principle of natural justice.

[13] The Claimant has therefore not presented any ground of appeal that falls under the DESD Act on which the appeal has a reasonable chance of success. It is not in the interests of justice to extend the time to file an application when it has no reasonable chance of success on its merits.

CONCLUSION

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

Valerie Hazlett Parker

[7] DESD Act s. 58(2)
[8] DESD Act s. 58(1)

Member, Appeal Division

REPRESENTATIVE:	I. S., Self-represented