



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. M. v. Minister of Employment and Social Development*, 2016 SSTADIS 477

Tribunal File Number: AD-15-1316

BETWEEN:

A. M.

Appellant

and

**Minister of Employment and Social Development
(formerly known as the Minister of Human Resources and Skills
Development)**

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

HEARD ON: December 6, 2016

DATE OF DECISION: December 7, 2016

REASONS AND DECISION

IN ATTENDANCE (via videoconference)

APPELLANT

A. M.¹

RESPONDENT'S REPRESENTATIVE

Sylvie Doire (counsel)

PRELIMINARY

[1] Exceptionally, this appeal is proceeding in the absence of the Appellant. She may have attended the hearing but due to unforeseen technical issues, videoconferencing with the Appellant's location failed. Given that I am granting the relief sought by the Appellant, it is in the interests of justice that I render a decision at the earliest opportunity, rather than unduly delaying this matter by adjourning and rescheduling a second hearing.

BACKGROUND

[2] Briefly, by way of background, the Appellant is seeking an Old Age Security pension. The Respondent denied her application as she had been unable to provide information regarding when she arrived in Canada. The Appellant filed an incomplete appeal of the Respondent's reconsideration decision within one year of the communication of the reconsideration decision; however, the appeal was completed more than one year after the day on which the reconsideration decision had been communicated to her under paragraph 52(1)(b) of the *Department of Employment and Social Development*.

[3] The General Division considered extending the time for filing the appeal under subsection 52(2) of the DESDA. On at least four separate occasions, the General Division requested outstanding information, including the Respondent's reconsideration decision, from the Appellant. The General Division also requested the Appellant address the questions of whether there had been a continued intention to pursue the appeal, whether the matter disclosed an arguable case, and whether there would be prejudice to the other party if it were

¹ Due to unforeseen technical issues, videoconferencing to the Appellant's location failed and efforts to contact the Appellant by telephone at the hearing location also failed.

to grant an extension to file the appeal. The Appellant did not provide a copy of the reconsideration decision or any of the requested information until June 15, 2015, after more than one year had passed from the time when the reconsideration decision had been communicated to her.

[4] On September 18, 2015, the General Division rendered its decision. It found that the Appellant had brought the appeal to the General Division more than one year after the reconsideration had been communicated to her. It held that, notwithstanding the Appellant's health reasons, it had to apply subsection 52(2) of the DESDA which also states that, in no case may an appeal be brought more than one year after the reconsideration decision was communicated to the [Appellant]".

[5] In my leave decision, I queried whether there may have been sufficiently compelling "special circumstances" to warrant considering whether paragraph 3(1)(b) of the Social Security Tribunal Regulations ought to be relied upon by the General Division to dispense a party from strict compliance with sections 23 and 24 or, for that matter, any provisions under the *Regulations*. Here, the Appellant indicates that as her disability pension ceased on April 30, 2013, she had limited income (GD2-22 and GD2-23), she had serious health issues including open-heart surgery and post-traumatic stress disorder, she had changed residences so did not receive correspondence from the Respondent in a timely manner and she did not have any control over when she might receive the information or documentation which she had requested of a third party to prove her entry into Canada.

[6] Two other factors warranted consideration as to whether any "special circumstances" existed. The first is that the Appellant may be eligible for a pension, based on the documentation accompanying her application (GD2-29), provided that she can establish her date of entry into Canada. Second is that possibly the Appellant might have been more responsive in providing the outstanding documentation, had the Social Security Tribunal notified her early on that she ran the risk of a limitation period. The Social Security Tribunal could have alerted her of the one year deadline before it had passed, but it did not do so until after the deadline had already passed.

[7] I granted leave to appeal the decision of the General Division on February 4, 2016, on the basis that there was a reasonable chance of success on the issue of whether the General Division should have considered the Appellant's "special circumstances". If so, it may have dispensed with the requirement provided under paragraph 24(1)(a) of the *Regulations* that the Appellant provide a copy of the reconsideration decision within one year from the day that the decision had been communicated to her, and thereby proceeded to hear the appeal of the Respondent's decision on the substantive merits of the matter.

APPEAL

[8] On October 11, 2016, the Respondent indicated that he was agreeable that the appeal be allowed pursuant to paragraph 58(1)(a) of the DESDA. Without any telephone contact information, given the imminent hearing date, there was no way to determine whether the Appellant was prepared to adjourn the proceedings and allow for a decision on the record.

[9] The Respondent submitted that the Appeal Division should allow the appeal and that an extension of time to file the appeal be granted. The Respondent agrees that the matter be referred back to the General Division for a determination on the issue of the Appellant's entitlement to an Old Age Security pension. This is the extent of relief sought by the Appellant.

[10] Subsection 52(2) of the DESDA mandates a strict one-year time limit by which an appeal must be brought. If there are special circumstances, paragraph 3(1)(b) of the *Regulations* permits the Tribunal to vary a provision of the *Regulations* or to dispense a party from compliance with a provision. Paragraph 3(1)(b) of the *Regulations* however does not extend to provisions under the DESDA, as it specifically refers to the *Regulations*. Hence, the Tribunal is unable to extend the one-year time limit under subsection 52(2) of the DESDA. However, the Tribunal can vary or dispense the requirements under the *Regulations*, such as paragraph 24(1)(a) of the *Regulations*, which requires that an appeal contain a copy of the decision (in this case, the Respondent's reconsideration decision). It would be appropriate to do so in this case, given the factual circumstances.

[11] While doubtless the Appellant would likely prefer that I determine her entitlement to an Old Age Security pension, that issue is more appropriately determined by the General Division, given that an assessment of the evidence has yet to be undertaken.

CONCLUSION

[12] Given the Respondent's position in this matter, the appeal is allowed, the requirement under paragraph 24(1)(a) of the *Regulations* is varied or dispensed with pursuant to paragraph 3(1)b) of the *Regulations*, the time within which to file the appeal is extended, and the matter is referred to the General Division for a determination on the merits.

Janet Lew
Member, Appeal Division