



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. G. v. Minister of Employment and Social Development*, 2016 SSTADIS 476

Tribunal File Number: AD-16-551

BETWEEN:

D. G.

Applicant

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 – Leave to Appeal

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: December 6, 2016

REASONS AND DECISION

INTRODUCTION

[1] On February 19, 2016, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) refused to grant the Applicant an extension of time.

[2] The GD determined that

- a) The Applicant did not have a continuing intention to pursue an appeal;
- b) The Applicant did not have a reasonable explanation for filing his notice of appeal with the GD late; and
- c) An extension had been refused on the basis of the factors in *Gattellaro* and the interests of justice.

[3] The Applicant filed a Notice of Appeal – General Division Income Security Section – Old Age Security on April 5, 2016. The Tribunal’s Appeal Division treated this document as the equivalent of an application for leave to appeal the GD’s decision (Application).

[4] The file before the GD and the GD’s decision were handled in English and the Applicant filed his Application in English. The Applicant authorized a Francophone representative in July 2016, and the communications from the Applicant have been in French since that time. For these reasons, this decision has been written in French.

History of the file

[5] The Applicant applied for an Old Age Security (OAS) pension in November 2008.

[6] The Respondent approved a partial pension payable as of July 2013. The Applicant filed a request for reconsideration, and the Respondent amended its original decision and determined that the pension was payable as of January 2012. The Applicant sent some documents and a copy of the reconsideration decision (dated June 10, 2015) to the Tribunal in June 2015.

[7] The Tribunal treated these documents as an incomplete notice of appeal. The Tribunal tried to contact the Applicant a number of times but was not successful. The Applicant eventually submitted additional information to add to that on file and his notice of appeal was considered complete. However, the appeal was filed late, and the Applicant was asked to explain the reasons for the delay. These communications were not received until December 2015.

[8] The period for filing a notice of appeal in respect of the reconsideration decision ended on September 16, 2015.

ISSUE

[9] Does the appeal have a reasonable chance of success?

THE LAW AND ANALYSIS

[10] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (Act) provide that “[a]n appeal to the Appeal Division may only be brought if leave to appeal is granted” and that the Appeal Division “must either grant or refuse leave to appeal”.

[11] Subsection 58(2) of the Act provides that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

[12] Under subsection 58(1) of the Act, the following are the only grounds of appeal:

- a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[13] The Tribunal will grant leave to appeal if it is satisfied that the Applicant has demonstrated that at least one of the aforementioned grounds of appeal has a reasonable chance of success.

[14] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the Act, whether there is a question of law, fact or jurisdiction or relating to a principle of natural justice the answer to which may justify setting aside the decision under review.

[15] The Applicant makes no reference to subsection 58 (1) of the Act in specifying his grounds for appeal. In the latter, he seems to be suggesting that the GD based its decision on an erroneous finding of fact or an error in law.

[16] The Applicant's position is as follows:

- a) [Translation] "the provisions of the social security code be applied to my application in accordance with the legislation and regulations";
- b) [Translation] "payment of my social security entitlements start well before the date stopped"; and
- c) He believed that the Tribunal had his new address and he did not receive the Tribunal's letter of July 2, 2015.

[17] It is not incumbent on the Member of the Appeal Division who must determine whether leave to appeal should be granted to reassess the evidence submitted before the General Division. According to my reading of the file and the GD's decision, the grounds that the Applicant raised in his Application and his additional observations have already been brought before the GD.

[18] Mere repetition of arguments already made before the GD is not sufficient to establish that one of the above grounds of appeal has a reasonable chance of success.

[19] An appeal to the AD is not a hearing on the merits of an applicant's OAS application.

[20] The GD's decision pertained to the extension the Applicant needed to file a late notice of appeal. The file before the GD contained the claimant's arguments that he was entitled to receive payments before 2012 and that he did not receive the letter of July 2, 2016.

[21] I find that the GD did not base its decision on an erroneous finding of fact that it made in a perverse or capricious manner without regard for the material before it.

[22] The GD's decision referred to the case law relevant to a request for an extension. The GD applied the law to the Applicant's situation. The decision that has been rendered is not subject to an error of law.

[23] Since the Applicant is not raising any of the grounds of appeal set out in subsection 58(1) of the Act, the appeal does not have a reasonable chance of success.

CONCLUSION

[24] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division