



[TRANSLATION]

Citation: *L. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 101

Tribunal File Number: AD-16-792

BETWEEN:

L. S.

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: March 14, 2017

REASONS AND DECISION

INTRODUCTION

[1] On March 2, 2016, the General Division of the Social Security Tribunal (Tribunal) denied an extension of time to file an appeal.

[2] The General Division had determined that, in light of the criteria established in *Gattellaro* (2005 FC 883) and in the interest of justice, the Tribunal denies the extension of time to file an appeal under subsection 52(2) of the *Department of Employment and Social Development Act* (DESDA).

File Background

[3] The Applicant made claims for the Guaranteed Income Supplement (GIS) for the years 2012 and 2013. The Respondent communicated its original decision to the Applicant in September 2014. The Respondent submitted a request for reconsideration of this decision on December 22, 2014. On March 17, 2015, the Respondent refused the application for reconsideration.

[4] The Applicant received the reconsideration decision on March 20, 2015. She filed an appeal to the Tribunal on June 23, 2015, after the end of the 90-day period provided for the filing of a notice of appeal.

[5] On June 26, 2015, the Tribunal notified the Applicant that her notice of appeal had been submitted late, and it asked for a written explanation “by July 27, 2015.”

[6] The Applicant responded on July 22, 2015, with a handwritten letter.

[7] The General Division decision is dated March 2, 2016.

[8] The Applicant argued that the General Division had failed to consider the explanation for her lateness or the reasons for her time extension request and that, by ignoring her response from July 22, 2015, the General Division failed to observe a principle of natural justice.

ISSUES

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

THE LAW AND ANALYSIS

[10] As stated in subsections 56(1) and 58(3) of the Act, “An appeal to the Appeal Division may only be brought if leave to appeal is granted” and “The Appeal Division must either grant or refuse leave to appeal.”

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

[12] Subsection 58(1) of the DESDA states that the only grounds of appeal are the following:

- 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 above-mentioned 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 DESDA, whether there is a question of law, fact or jurisdiction, or relating to a principle of natural justice, the answer to which could lead to the setting aside of the contested decision.

[15] The Applicant’s argument that she had been denied natural justice has a reasonable chance of success. The General Division’s decision makes no reference to the Applicant’s letter

of July 22, 2015. However, the letter had been submitted before the deadline and had been added to the file several months before the General Division issued its decision.

[16] In his decision, the General Division member noted that the Applicant [translation] “offered no explanation of the lateness or of the continued intention to pursue her appeal.” This is an erroneous finding of fact that the General Division made in a perverse or capricious manner or without regard for the material before it. The Applicant had offered an explanation (in July 2015), which the General Division seems to have overlooked.

[17] Upon review of the appeal file, the General Division’s decision and the parties’ arguments, I conclude that the appeal has a reasonable chance of success. There are questions pertaining to an erroneous finding of fact and a breach of a principle of natural justice, the answers to which could lead to the setting aside of the contested decision.

CONCLUSION

[18] Leave to appeal is granted.

Shu-Tai Cheng
Member, Appeal Division