



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. R. v. Minister of Employment and Social Development*, 2017 SSTADIS 199

Tribunal File Number: AD-16-669

BETWEEN:

**J. R.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Janet Lew

Date of Decision: May 2, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] The Applicant seeks leave to appeal the General Division's decision, dated March 9, 2016, which refused an extension of time for filing an appeal, as the General Division determined that the Applicant had filed the appeal more than one year after receiving the Respondent's reconsideration decision.

### ISSUE

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

### ANALYSIS

[3] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to 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.

[4] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court of Canada endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[5] The Applicant submits that the General Division erred under each of these grounds. The crux of his argument is that the General Division erred in finding that he had even been late at all in bringing an appeal, as he claims that he had filed his appeal within 90 days of

receiving the reconsideration decision on October 21, 2013. The Applicant claims that he immediately filed an appeal with the General Division on November 12, 2013. In fact, the Social Security Tribunal received and date-stamped the Applicant's Notice of Appeal on November 26, 2013. (Service Canada had received and date-stamped the Notice on Appeal on November 12, 2013.)

[6] The Applicant acknowledges, however, that when he filed his appeal, he neglected to provide a copy of the reconsideration decision and to indicate when he had received a copy of the reconsideration decision. The General Division also found that the Applicant had neglected to provide his full name, the grounds for the appeal and a declaration that the information provided was true to the best of the Applicant's knowledge. While the Applicant acknowledges that he had not perfected his appeal when he filed it, he argues that, on the basis of a procedural defect, there is a breach of natural justice in finding that he was late. He further argues that the Social Security Tribunal nevertheless had a copy of the reconsideration decision and was aware of the grounds from the Respondent's document, "Summary of Decision" (AD1-39/GD2-19).

[7] The Applicant prepared extensive submissions. He raised other arguments, alleging bias and age discrimination, but for the purposes of this application requesting leave to appeal, I find it unnecessary to address each of them.

[8] The General Division found that the Applicant had filed an incomplete appeal on December 31, 2014. Had that been an undisputed fact, the General Division would have been correct in finding that it did not have any discretionary authority under subsection 55(23) of the DESDA to extend the time for filing an appeal.

[9] In this case, however, the Applicant alleges that he filed an appeal on November 26, 2013. There is documentary evidence to support this allegation. Yet, there is no reference or any consideration given to the Applicant's appeal filed on November 26, 2013. It is unclear from the decision whether the member was even aware that the Applicant had filed an appeal on November 26, 2013. It appears to me that the General Division may have overlooked a critical factor in determining whether the Applicant's appeal (filed on

November 26, 2013) had been filed on time. On this basis alone, I am satisfied that the appeal has a reasonable chance of success.

[10] Finally, I will add that paragraph 3(1)(b) of the *Social Security Tribunal Regulations* (Regulations) provides that the Tribunal may, if there are special circumstances, vary a provision of the Regulations or dispense a party from the compliance with a provision. Given that the Tribunal allegedly failed to properly notify the Applicant of the procedural defect in his notice of appeal (by mailing to another individual at another address, correspondence that was actually intended for the Applicant) in a timely manner, this case may fall under the special circumstances provided for in paragraph 3(1)(b) of the Regulations. The Tribunal notified the Applicant in May 2014 that his notice of appeal was incomplete, however, it failed to provide specifics as to what remained missing, referring to only its letter of January 3, 2014, which had been mailed to another individual at another address. The Applicant allegedly did not learn why his notice of appeal was incomplete, until after one year had passed from the time that he had received the reconsideration decision.

## **CONCLUSION**

[11] The application for leave to appeal is granted. This decision granting leave to appeal does not, in any way, prejudge the result of the appeal on the merits of the case.

Janet Lew  
Member, Appeal Division