



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. P. v. Minister of Employment and Social Development*, 2017 SSTADIS 501

Tribunal File Number: AD-17-3

BETWEEN:

P. P.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

LEAVE TO APPEAL DECISION BY: Shu-Tai Cheng

DATE OF DECISION: September 29, 2017

REASONS AND DECISION

INTRODUCTION

[1] On May 31, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal. The Applicant had applied for an Old Age Security (OAS) pension. The Respondent approved a partial pension of 19/40ths effective as of May 2012.

[2] The Applicant requested reconsideration on the issues of his residency in Canada and the effective date of payment of his OAS pension. The Respondent maintained the original decision.

[3] The Applicant appealed to the Tribunal's General Division in September 2014.

[4] A Notice of Hearing, dated February 19, 2016, was sent to the Applicant. A hearing by teleconference was scheduled for May 30, 2016.

[5] The Applicant did not participate in the teleconference, despite having received the Notice of Hearing and having confirmed that he would be attending. The hearing was held in his absence.

[6] The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on December 29, 2016. He stated that he only received a copy of the General Division decision on September 30, 2016, although he had been advised of the outcome over the phone in August 2016. His Application also states that he attempted three times to connect to the telephone conference hearing and that the connection failed each time.

ISSUE

[7] Was the Application filed late? If it was, an extension of time to apply for leave to appeal must be granted for the Application to be considered.

[8] In order to succeed on this Application, the Applicant must show that the appeal has a reasonable chance of success.

LAW AND ANALYSIS

[9] According to subsections 56(1) and 58(3) of the *Department of Employment and Social and Development Act* (DESD 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.”

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

[11] Subsection 58(1) of the DESD Act 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.

[12] The Applicant’s grounds of appeal are that:

- a) he tried to connect to the telephone conference hearing but the connection failed three times; and
- b) he did not have an opportunity to present his case.

[13] The Tribunal’s file includes telephone logs, which show that:

- a) the Applicant contacted the Tribunal on May 31, 2016, to report that he had missed his hearing;

- b) the General Division member who heard and decided the appeal did not appear to have been aware that the Applicant had called on the date that the decision had been issued, one day after the hearing; and
- c) the Applicant called again on June 1, August 25, and August 31, about the General Division hearing and decision.

Late Application

[14] The Applicant appears to have been late in filing his Application with the Appeal Division.

[15] The Application states that the Applicant received the written decision on September 30, 2017. However, there is a Tribunal telephone log that states that the Applicant's wife confirmed that they had received the decision and cover letter by fax by August 31, 2016.

[16] If the Applicant received the General Division decision on or before August 31, 2016, then the Application was filed late. If the Applicant received it on September 30, 2016, then the Application would have been filed within the 90-day appeal period.

[17] The information in the file is conflicting and, therefore, it is not possible to determine the date on which the Applicant received the General Division decision.

[18] In *Canada (Attorney General) v. Larkman*, 2012 FCA 204, the Federal Court of Appeal held that, when determining whether to allow an extension of time, the overriding consideration is that the interests of justice be served.

[19] Therefore, I will consider whether the appeal has a reasonable chance of success. If it does, I will grant an extension of time, if one is needed.

Leave to Appeal

[20] Before leave to appeal can be granted, the Tribunal must be satisfied that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[21] The Application refers to the grounds of appeal in paragraph 58(1)(c) of the DESD Act: erroneous findings of fact.

[22] The Respondent was not present at the General Division hearing, although it did file written representations prior to the hearing. The Respondent was not asked to provide submissions on whether leave to appeal should be granted or refused.

[23] Given the fundamental nature of the right to be heard and the circumstances of this case, I am satisfied that the appeal has a reasonable chance of success pursuant to paragraph 58(1)(a) of the DESD Act, as there may have been a breach of the principles of natural justice.

CONCLUSION

[24] An extension of time to file the Application is granted.

[25] The Application is granted.

[26] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Shu-Tai Cheng
Member, Appeal Division