Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *R. M. v. Minister of Employment and Social Development*, 2018 SST 704

Tribunal File Number: AD-18-139

BETWEEN:

R. M.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: June 27, 2018

Canada

DECISION AND REASONS

DECISION

[1] Leave to appeal a decision rendered by the General Division of the Tribunal is refused.

OVERVIEW

[2] The Applicant is an Old Age Security (OAS) pension recipient. However, the pension was suspended in August 2015 by the Respondent, the Minister of Employment and Social Development, while the Applicant was incarcerated. The Applicant requested a reconsideration of that decision, but it was maintained on December 1, 2015.

[3] On March 8, 2017, the Applicant appealed that decision to the Tribunal's General Division. The Applicant is of the view that his appeal raises important issues regarding the constitutionality of the Minister's decision to suspend his OAS pension without specifying which legislative provision it invoked to do so.

[4] However, the General Division found that the appeal had not been brought in time and, as a result, it would not be heard.

[5] Before the matter can proceed, the Applicant needs leave to appeal the General Division decision. Leave is refused for the following reasons.

ISSUES

[6] The Applicant's arguments do not form part of the legal framework that governs the Tribunal. In deciding this matter, I addressed the following questions:

a) Is there an arguable ground that the General Division failed to observe a principle of natural justice or made an error of law by rejecting the Applicant's application for an extension of time?

b) Is there another arguable ground upon which the appeal might succeed?

ANALYSIS

The Appeal Division's legal framework

[7] At the Appeal Division, the emphasis is on determining whether the General Division made at least one of the three errors (or grounds of appeal) set out in s. 58(1) of the *Department of Employment and Social Development Act* (DESD Act). In general terms, did the General Division:

a) fail to observe a principle of natural justice or make an error of jurisdiction;

b) err in law; or

c) base 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?

[8] Most appeals before the Appeal Division take place in two stages: the leave to appeal stage followed by the hearing on the merits stage. This appeal is currently at the leave to appeal stage, which means that the Tribunal must grant permission for the appeal to continue. This preliminary step is intended to filter out appeals that have no reasonable chance of success.[1] At this stage, applicants have a minimal legal test to meet: is there any arguable ground on which the appeal might succeed?[2]

[1] DESD Act, at s. 58(2).
[2] *Osaj v. Canada (Attorney General)*, 2016 FC 115; *Ingram v. Canada (Attorney General)*, 2017 FC 259.

Issue 1: Is there an arguable ground that the General Division failed to observe a principle of natural justice or made an error of law by rejecting the Applicant's application for an extension of time?

[9] In support of his application for leave to appeal, the Applicant argued that the General Division failed to observe a principle of natural justice or made an error of law by rejecting his application for an extension of time. In my view, these arguments have no reasonable chance of success.

[10] The Applicant was not very specific regarding how the General Division failed to observe a principle of natural justice. However, natural justice is concerned with ensuring that an applicant has a fair and reasonable opportunity to make their case, that they have a fair hearing, and that the decision rendered is free of any bias or the reasonable apprehension or appearance of bias.

[11] The relevant facts are undisputed. On September 9, 2015, the Minister informed the Applicant that his OAS pension would be suspended as of September 2015 because of his incarceration. The Applicant requested a reconsideration of that decision, but it was maintained on December 1, 2015.[3] The letter about the reconsideration of the decision stated that, if the Applicant did not agree with the decision, he should appeal it to the General Division within 90 days of receiving the letter. However, the Applicant did not appeal to the General Division before March 8, 2017.[4]

[12] In the interim, the Applicant tried on numerous occasions to determine which legislative provision the Minister relied on to suspend his OAS pension.[5] He never received an answer to this question, so the Applicant appealed the Minister's decision on the ground that it had acted unconstitutionally.

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[3] GD2-15.
[4] The notice of appeal received March 8, 2017 was deemed incomplete. The Applicant provided the missing information on May 10, 2017, and the notice of appeal was deemed complete on that date.
[5] For example, GD4.

[13] From the beginning, the Applicant acknowledged that his appeal was late, and he asked the General Division to grant him an extension of time to appeal.[6]

[14] A letter dated May 11, 2017, from the Tribunal also informed the Applicant that his notice of appeal appeared to be late and that an extension of time could not be granted if more than one year had passed since the reconsideration decision was communicated to him. Furthermore, he was given 40 days to file submissions on the late appeal.

[15] The Tribunal received the Applicant's submissions on May 29, 2017.[7] It received other documents from the Applicant on June 7, 2017, and the General Division rendered its decision on February 13, 2018.[8]

[16] Among his submissions, the Applicant argued the following:

a) Since the Minister seized his assets without specifying a legal benchmark to justify its actions, it did not uphold [translation] "the rights of incarcerated people, tribunal rulings, case law, and the 1982 *Canadian Charter of Rights and Freedoms*; it's a denial of justice and procedure";[9]

b) The Minister's unconstitutional act is not in line with article 6 of the *Criminal Code*;

c) His request for an extension of time to appeal should be granted under the *Federal Courts Rules*;

d) Rejecting the Applicant's application for an extension of time to appeal [translation] "would be a flagrant denial of justice and procedural fairness to [the Applicant]."[10]

[17] In support of his arguments, the Applicant invoked sections 1, 15, and 24 of the *Canadian Charter of Rights and Freedoms*.

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[6] GD1-8 to GD1-9.
[7] GD3.
[8] GD4 and AD1A.
[9] GD3-2.
[10] *Ibid.*

[18] Regardless of the Applicant's arguments, the General Division found that it was required to apply s. 52(2) of the DESD Act. This provision stipulates that the General Division can grant an extension of time solely to an appellant who files their appeal within the year following the date on which the reconsideration decision was communicated to them.

[19] Since the Applicant did not appeal within the time allotted, the General Division dismissed his appeal.

[20] It is clear to me that the Applicant had a fair and reasonable opportunity to make his case, as well as a fair procedure before the General Division. No allegation has been raised concerning a lack of independence. Furthermore, the Applicant was well aware that his notice of appeal was late and had a number of opportunities to explain why he thought it was less than a year late and why he should receive an extension of time.

[21] For example, the General Division asked the Applicant twice to state the date on which he received the letter from the Minister dated December 1, 2015, to determine the beginning of the period during which the Applicant should have appealed.[11] Finally, the General Division found that the Applicant had received that letter by December 11, 2015, at the latest, and this finding is undisputed.[12]

[22] In addition, the Applicant was explicitly informed that an extension of time could not be granted for an appeal that is more than one year late, and he had 40 days to file submissions on this issue.[13]

[23] As a result, I have found the Applicant's argument that the General Division failed to observe a principle of natural justice or otherwise acted beyond its jurisdiction to have no reasonable chance of success.

[24] Concerning the allegation that the General Division made an error of law by refusing to apply the provisions invoked by the Applicant, most of those provisions do not apply to this case (e.g. the *Criminal Code* and the *Federal Court Rules*). Furthermore, the Constitutional attack

[11] See the letters from the Tribunal dated March 10 and April 20, 2017.
[12] General Division decision at para. 10.
[13] See the letter from the Tribunal dated May 11, 2017.

launched by the Applicant focuses on the Minister's handling of his file and in no way concerns the DESD Act. In the absence of such an attack, the General Division is required to apply s. 52(2) of the DESD Act and that cannot be held against it.

[25] In other words, the General Division did not have the jurisdiction to grant the Applicant an extension of time, and the Applicant's argument that the General Division made an error of law by refusing his application has no reasonable chance of success.

Issue 2: Is there another arguable ground on which the appeal might succeed?

[26] Although the onus is on applicants to raise arguable grounds on which their appeals might succeed, I am not limited to the precise grounds of appeal that they cite in their applications for leave to appeal. If the General Division could have misinterpreted or mischaracterized some evidence, leave to appeal should normally be granted, regardless of technical deficiencies in the application.[14]

[27] After reviewing the case in question and the decision under appeal, I am satisfied that the General Division considered the relevant evidence.

CONCLUSION

[28] It may not be the answer that the Applicant was hoping for, but the Tribunal is a legislative entity that has only the powers that the law gives it. The Tribunal interprets and applies the legislative provisions as they are set out and cannot use the principles of equity or consider extenuating circumstances to grant an extension of time to appeal.

[29] The application is refused.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	R. M., self-represented

[14] *Tracey v. Canada (Attorney General)*, 2015 FC 1300, at para. 31; *Griffin v. Canada (Attorney General)*, 2016 FC 874, at para. 20; *Karadeolian v. Canada (Attorney General)*, 2016 FC 615, at para. 10.

ANNEX

Department of Employment and Social Development Act

Appeal — time limit

52 (1) An appeal of a decision must be brought to the General Division in the prescribed form and manner and within,

(a) in the case of a decision made under the *Employment Insurance Act*, 30 days after the day on which it is communicated to the appellant; and

(b) in any other case, 90 days after the day on which the decision is communicated to the appellant.

Extension

(2) The General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the day on which the decision is communicated to the appellant.

Old Age Security Act

Incarcerated persons

5 (3) No pension may be paid in respect of a period of incarceration — exclusive of the first month of that period — to a person who is subject to a sentence of imprisonment

(a) that is to be served in a penitentiary by virtue of any Act of Parliament; or

(b) that exceeds 90 days and is to be served in a prison, as defined in subsection 2(1) of the *Prisons and Reformatories Act*, if the government of the province in which the prison is located has entered into an agreement under section 41 of the *Department of Employment and Social Development Act*.