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

Citation: *B. N. v. Minister of Employment and Social Development*, 2018 SST 949

Tribunal File Number: AD-18-562

BETWEEN:

B. N.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: September 25, 2018

Canada

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

INTRODUCTION

[2] The Applicant, B. N., applied for an Old Age Security pension. The Respondent, the Minister of Employment and Social Development (Minister), refused the application because it found that the Applicant had not been a resident of Canada for at least 10 years, as required under the law. The Applicant asked for reconsideration, but, in November 2016, the Minister maintained its decision.

[3] In April 2018, the Applicant appealed the Minister's refusal to the General Division of the Social Security Tribunal, beyond the time limit set out in the *Department of Employment and Social Development Act* (DESDA).

[4] In a decision dated June 5, 2018, the General Division found that the Applicant's appeal was brought more than one year after he received the Minister's response to his request for reconsideration. Citing s. 52(2) of the DESDA, the General Division refused to grant the Applicant an extension of time to file an appeal.

[5] On September 4, 2018, the Applicant's legal representative filed an application for leave to appeal with the Tribunal's Appeal Division. He alleges that the General Division breached a principle of natural justice by refusing to consider what he regards as the Minister's errors: "The mere service of the decision to the [Applicant] and the confirmation of the receipt of same does not deny the [Applicant] his right to challenge the Minister on his decision…." The Applicant's representative also asked that the General Division's decision be overturned so that new evidence could be submitted.

[6] Having reviewed the record, I have concluded that the Applicant's appeal would have no reasonable chance of success.

ISSUE

[7] According to s. 58 of the DESDA, there are only three grounds of appeal to the Appeal Division: The General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it. An appeal may be brought only if the Appeal Division first grants leave to appeal,[1] but the Appeal Division must first be satisfied that the appeal has a reasonable chance of success.[2] The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.[3]

[8] I must decide whether the Applicant has presented an arguable case that falls into one or more of the grounds set out in s. 58 of the DESDA. In particular, I must consider whether the General Division erred in refusing the Applicant an extension of time to file his appeal.

ANALYSIS

[9] The Applicant rightly notes that a leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for an applicant to meet than what must be met on the hearing of the appeal on the merits.[4] However, in this case, I cannot find that the Applicant has met even this lower standard.

[10] Under s. 52(1)(*b*) of the DESDA, an appeal must be brought to the General Division within 90 days after the day on which the decision was communicated to the appellant. Under s. 52(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.

[11] The evidence shows that the Minster sent its reconsideration letter to the Applicant on November 15, 2016. As the General Division noted, the Applicant wrote to the Minster on December 1, 2016, regarding the reconsideration letter, and admitted to receiving the reconsideration letter on November 21, 2016. Although the Applicant continued to communicate

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[1] DESDA, at ss. 56(1) and 58(3).
[2] *Ibid*., at s. 58(2).
[3] *Fancy v. Canada (Attorney General)*, 2010 FCA 63.
[4] *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No 1252.

with the Minister, he did not submit a notice of appeal to the General Division until April 18, 2018—nearly 17 months after receiving the reconsideration letter.

[12] In his leave to appeal application, the Applicant's representative does not dispute the finding that his client's appeal to the General Division was submitted more than one year after he received the reconsideration letter. For appeals submitted more than one year after reconsideration, the law is strict and unambiguous. Subsection 52(2) of the DESDA states that **in no case** may an appeal be brought more than one year after the reconsideration decision was communicated to the appellant. While extenuating circumstances may be considered for appeals that come after 90 days but within a year, the wording of s. 52(2) all but eliminates scope for a decision-maker to exercise discretion once the year has elapsed. The Applicant's explanation for filing his appeal late is therefore rendered irrelevant, as are other factors, such as his financial need or the merits of his pension claim.

[13] It is indeed unfortunate that missing a filing deadline may have cost the Applicant an opportunity to appeal, but the General Division was bound to follow the letter of the law, and so am I. The Applicant may regard this outcome as unfair, but I can exercise only the jurisdiction granted by the Appeal Division's enabling statute. Support for this position may be found in *Pincombe v. Canada*,[5] among other cases, which have held that an administrative tribunal is not a court but a statutory decision-maker and, therefore, not empowered to provide any form of equitable relief.

CONCLUSION

[14] I do not see an arguable case that the General Division based its decision to deny the Applicant an extension of time to appeal on an erroneous finding of fact, that it erred in law, or that it breached a principle of natural justice.

[5] *Pincombe v. Canada (Attorney General)*, [1995] FCJ No 1320 (FCA).

[15] Leave to appeal is refused.

Member, Appeal Division

REPRESENTATIVE:	Parbinder Bhangu, for the Applicant