Federal Court  Cour fédérale

Date: 20161020

Docket: T-1966-15

Citation: 2016 FC 1179

Ottawa, Ontario, October 20, 2016

PRESENT: Madam Prothonotary Mireille Tabib

BETWEEN:

ROBERT PATTERSON

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] The Applicant, Robert Patterson, makes this motion for an extension of time to serve and file his application record.

[2] I have considered Mr. Patterson's motion record and the motion record of the Respondent, Attorney General of Canada. I have also considered Mr. Patterson's proposed application record which he submitted for filing and would be filed if the extension were granted.

[3] I have concluded that the extension of time should not be granted.

[4] In determining whether to extend the time to take a step in a proceeding, the Court must consider the following four factors:

1) Whether there is a reasonable explanation for the delay;
2) Whether the party has shown a continuing intention to proceed;
3) Whether the extension would cause prejudice to the other party; and
4) Whether there is some merit to the claim.

(*Canada (Attorney General) v Hennelly*, (1999) 244 NR 399 (FCA).

[5] It is not necessary for each criterion to be met, but the Court should consider and weigh all criteria to ensure that justice is done between the parties in the particular circumstances of the case (*Grewal v Canada (Minister of Employment and Immigration)*, [1985] 2 FC 263).

[6] In its response, the Attorney General generously conceded that the first three criteria were met, and took issue only with the last criterion: i.e., whether there is merit to the application.

[7] I do not share the Attorney General's view that Mr. Patterson has provided a reasonable explanation for the delay. I accept that the delay was caused by his lack of understanding of the rules and procedures of the Court, his minimal education and his financial inability to hire a lawyer. However, as much as I may sympathise with Mr. Patterson's difficulties, it has consistently been held by the Court that these factors do not constitute an acceptable justification for delay (*Cotirta v Missinnipi Airways*, 2012 FC 1262, upheld 2013 FCA 280; *Nowoselsky v Canada (Treasury Board)*, 2004 FCA 418). The Rules of the Court were intended to apply

equally to all litigants, regardless of their personal circumstances or whether they are represented by lawyers.

[8] Equally importantly, however, and having carefully reviewed the materials before me, I find that Mr. Patterson's proposed application record does not disclose an arguable case on this judicial review. Allowing an extension of time for Mr. Patterson to file this record is not in the interest of justice as it could not lead to a decision in Mr. Patterson's favour.

[9] Mr. Patterson's application is for a judicial review of the decision of the Social Security Tribunal, Appeal Division (SST-AD), which refused leave to appeal a decision of the Social Security Tribunal, General Division (SST-GD).

[10] It is very clear from the proposed application record that Mr. Patterson's case relies entirely on a letter from his family doctor, obtained after this application was launched, which he submits clearly "disproves" the conclusion reached by the SST-GD that he does not have a disability that is both severe and prolonged. This new evidence was not before the SST-GD, nor before the SST-AD.

[11] The role and powers of this Court on judicial review is limited to controlling whether the decision under review, in this case, the decision of the SST-AD, was lawful. This does not involve reviewing and re-determining the merits of the initial decision, but only reviewing whether the SST-AD followed the rules of natural justice, applied the correct legal test to its decision and came to a reasonable decision based on the record that was before it at the time it

made its decision. This Court on judicial review has no jurisdiction or power to consider evidence, opinions or documents that were not before the Tribunal, in order to come to its own determination on the merits of the underlying decision, whether it be the initial decision of the SST-GD or of the SST-AD (*Ezerzer v Canada (Minister of Human Resources Development)*, 2006 FC 812, *Belo Alves v Canada (Attorney General)*, 2014 FC 1100).

[12] There is nothing in the proposed application record that suggests that there is any ground for Mr. Patterson to argue that, on the basis of the record that was before the SST-AD, the SST-AD made a reviewable error when it refused leave to appeal the decision of the SST-GD. No useful purpose would be served by allowing Mr. Patterson an extension of time to serve and file his record in the circumstances. Nor is there any reason to believe that, given more time, Mr. Patterson might be able to put together a record that discloses an arguable case.

[13] The filing of an application record is an essential step to bringing an application to a final hearing and determination. My decision not to grant Mr. Patterson an extension of time to file his record makes it impossible for this application to continue any further. Rule 168 of the *Federal Courts Rules* provides that in such circumstances, the Court may dismiss the proceeding, and this application will accordingly be dismissed.

ORDER

THIS COURT ORDERS that:

1. The Applicant's motion is dismissed.

2. The within application is consequently dismissed pursuant to Rule 168 of the *Federal Courts Rules*.

3. The whole, without costs.

"Mireille Tabib"
Prothonotary

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1966-15
STYLE OF CAUSE:	ROBERT PATTERSON v ATTORNEY GENERAL OF CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*.

JUDGMENT AND REASONS:	**TABIB P.**
DATED:	**October 20, 2016**

WRITTEN REPRESENTATIONS BY:

Robert Patterson	FOR THE APPLICANT (Self-represented)
Jennifer Hockey	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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William F. Pentney Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT