

Federal Court



Cour fédérale

Date: 20180307

Docket: T-686-17

Citation: 2018 FC 264

Ottawa, Ontario, March 7, 2018

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

BRYAN BISSESSAR

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr Bryan Bissessar experiences depression, chronic pain, and high cholesterol. He twice sought disability benefits from the Canada Pension Plan, and was twice denied. The latest decision, from 2016, was rendered by the General Division of the Social Security Tribunal (SST), which concluded that Mr Bissessar did not have a severe and prolonged disability on or prior to the date of his minimum qualifying period (MQP), December 31, 2009.

[2] Mr Bissessar appealed the General Division's decision to the Appeal Division of the SST. However, he only perfected his appeal after the normal 90-day limit. The issue before the Appeal Division was whether Mr Bissessar should be afforded an extension of time to file his appeal under s 57(2) of the *Department of Employment and Social Development Act, SC 2005, c 34* (see Annex for provisions cited).

[3] The Appeal Division concluded that Mr Bissessar should not be granted an extension of time because he had failed to show that his appeal had sufficient merit.

[4] Mr Bissessar argues that the Appeal Division's ruling was unreasonable because it failed to take account of significant evidence relating to his medical condition. In particular, the Appeal Division found that the General Division had fully considered the evidence before it and arrived at a defensible conclusion. However, Mr Bissessar submits that the General Division had failed to reference a medical opinion that he was unemployable in any capacity prior to his MQP date. He asks me to quash the Appeal Division's decision and order another panel to reconsider his request for an extension.

[5] I agree with Mr Bissessar that the Appeal Division's refusal of his extension of time was unreasonable on the evidence. An important piece of evidence was overlooked. I will therefore grant Mr Bissessar's application for judicial review.

[6] The sole issue is whether the Appeal Division's refusal to grant an extension of time was unreasonable.

II. Did the Appeal Division unreasonably deny Mr Bissessar an extension?

[7] The Appeal Division applied the test recognized in *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883, which contains four criteria. An applicant for an extension must show:

1. A continuing intention to appeal;
2. An arguable case;
3. A reasonable explanation for the delay; and
4. An absence of prejudice to the other party.

[8] The Appeal Division concluded that Mr Bissessar had met all branches of the test except item 2, an arguable case. It found that the General Division had reasonably concluded that there was insufficient evidence of Mr Bissessar's incapacity as of the MQP date.

[9] The Attorney General of Canada argues that the Appeal Division's conclusion was reasonable because Mr Bissessar had no more than restated his arguments before the General Division. Further, while Mr Bissessar now points to a favourable medical opinion supporting his case, he failed to draw the Appeal Division's attention to that opinion.

[10] I disagree with the Attorney General's submissions.

[11] The medical evidence before the General Division included a medical opinion from Dr Silverberg dated June 24, 2009, just months before the MQP date, stating that Mr Bissessar was

not employable in any capacity. Yet, the General Division stated that there were no medical reports before it that were close to the MQP date. This evidence, on its own, shows that Mr Bissessar had at least an arguable case to present to the Appeal Division justifying an extension of time.

[12] Further, I am satisfied that Mr Bissessar provided the Appeal Division sufficient notice of the basis for his application for leave. In his application, he stated that “the doctors make it clear that I was disabled from performing at any work capacity.” While he did not refer specifically to Dr Silverberg’s opinion, I do not believe it was necessary for him to do so for the purposes of an application for leave.

[13] Therefore, I am satisfied that the Appeal Division’s refusal of Mr Bissessar’s request for an extension was unreasonable in the circumstances.

III. Conclusion and Disposition

[14] The Appeal Division unreasonably concluded that Mr Bissessar had failed to satisfy the requirement that he present an arguable case in support of his request for an extension of time. I will grant Mr Bissessar’s application for judicial review, with costs, and order another panel of the Appeal Division to reconsider his request.

JUDGMENT IN T-686-17

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is allowed, with costs.
2. The Respondent SOCIAL SECURITY TRIBUNAL OF CANADA is hereby removed as a party to this application and the style of cause is amended accordingly.

"James W. O'Reilly"

Judge

Annex

*Department of Employment
and Social Development Act,
SC 2005, c 34*

*Loi sur le ministère de
l'Emploi et du Développement
social, LC 2005, ch. 34*

Extension

Délai supplémentaire

57(2) The Appeal Division may allow further time within which an application for leave to appeal is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant.

57(2) La division d'appel peut proroger d'au plus un an le délai pour présenter la demande de permission d'en appeler.

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-686-17

STYLE OF CAUSE: BRYAN BISSESSAR v THE ATTORNEY GENERAL
OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 12, 2017

JUDGMENT AND REASONS: O'REILLY J.

DATED: MARCH 7, 2018

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