

Citation: *N. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 435

Appeal No. AD-14-517

BETWEEN:

**N. S.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Pierre Lafontaine

DATE OF DECISION: March 27, 2015

## **DECISION**

[1] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

## **INTRODUCTION**

[2] On August 17, 2014, the General Division of the Tribunal determined that:

- The Applicant failed to meet the onus placed upon her to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to section 10(4) of the *Act*.

[3] The Applicant requested leave to appeal to the Appeal Division on September 26, 2014.

## **ISSUE**

[4] The Tribunal must decide if the appeal has a reasonable chance of success.

## **THE LAW**

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

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

## **ANALYSIS**

[7] 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.

[8] The Applicant needs to satisfy the Tribunal that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[9] The Applicant, in her application for leave, essentially repeats the arguments she made before the General Division. She delayed filing her claim because she was very ill with a bone tumour and that this was after being dismissed from her employment after 18 years. She became stressed and confused due to the many surgical procedures she required. She was also misinformed by Service Canada.

[10] The Applicant is basically asking this Tribunal to re-evaluate and reweigh the evidence that was put before the General Division which is the province of the trier of fact and not of an appeal court. It is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision of the General Division.

[11] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. The Application is deficient in this regard and the Applicant has not satisfied the Tribunal that the appeal has a reasonable chance of success.

## **CONCLUSION**

[12] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

*Pierre Lafontaine*

Member, Appeal Division