

[TRANSLATION]

Citation: *C. T. v. Canada Employment Insurance Commission*, 2015 SSTAD 716

Date: June 9, 2015

File number: AD-15-102

APPEAL DIVISION

Between:

C. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On February 16, 2015, the Tribunal's General Division found that:

- The appeal to the Tribunal's General Division had not been brought within the time limit set out in subsection 52(2) of the *Department of Employment and Social Development Act*.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on March 4, 2015.

ISSUE

[4] The Tribunal must determine whether the appeal has a reasonable chance of success.

THE LAW

[5] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, “[a]n 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 *Department of Employment and Social Development Act* provides that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

ANALYSIS

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (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 or order, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for the Applicant to meet than the one that must be met on the hearing of the appeal on the merits. At the application for leave to appeal stage, the Applicant does not have to prove his case.

[9] The Tribunal will grant leave to appeal if the Applicant shows that any of the above grounds of appeal has a reasonable chance of success.

[10] To do so, the Tribunal must, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, be able to see a question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In his application for leave to appeal, the Applicant submits that he was unable to defend himself due to his psychological state in 2013. He argues that the General Division's decision focuses on the "administrative" aspect and not on the situation that led him to act so late. He has filed a copy of his attending psychiatrist's report dated February 15, 2015.

[13] In this case, the Respondent denied the Applicant's initial claim for benefits. On October 18, 2013, it also denied his request for reconsideration. In the notice of appeal he filed with the Tribunal's General Division on January 22, 2015 (GD2-1 to GD2-6), the Applicant stated that the Respondent's revised decision had been communicated to him on

October 18, 2013. The Applicant appealed that decision to the General Division on January 22, 2015, 15 months after the decision.

[14] Subsection 52(1) of the *Department of Employment and Social Development Act* provides that 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.

[15] Section 25 of the *Social Security Tribunal Regulations* provides that a person who does not file an appeal within the time limits set out in subsection 52(1) of the *Department of Employment and Social Development Act* may request an extension of time by filing their appeal with a statement that sets out the reasons why the General Division should allow further time for the bringing of the appeal.

[16] However, subsection 52(2) of the *Department of Employment and Social Development Act* provides that 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.

[17] The Applicant did not file his application for leave to appeal within the 30-day time limit set out in the *Act*, since he was unable to defend himself due to his psychological state in 2013.

[18] The General Division could not consider the situation that led the Applicant to act so late, since it had no authority to extend the time limit for filing the application for leave to appeal by more than one year.

[19] The Tribunal has no choice but to conclude that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division