



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. O. v. Canada Employment Insurance Commission*, 2016 SSTADEI 16

Appeal No. AD-15-438

BETWEEN:

**J. O.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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

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SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: January 13, 2016

DECISION: Leave to appeal refused

## **DECISION**

[1] On February 18, 2015, a member of the General Division dismissed the Applicant's appeal from the previous determination of the Commission on the basis that it had been filed late. On June 25, 2015, the Applicant filed an application requesting leave to appeal this decision to the Appeal Division.

[2] Subsection 58(1) of the *Department of Employment and Social Development Act* states that 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, 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.

[3] The *Act* also states that leave to appeal is to be refused if the appeal has "no reasonable chance of success".

[4] In his application the Applicant discussed at length the reasons why he felt that he left his employment with just cause, specifically that his work issues were caused by his alcoholism. In explaining his late filing to the Appeal Division, he says only that his delay was caused "because of illness caused by my addictions".

[5] The Applicant has not provided any medical evidence to substantiate his submissions, such as a doctor's note. Nor is it clear, even if I accept his explanation, how his illness prevented him from filing an appeal in a timely manner. That being said, the delay was not a long one, and I am prepared to accept that he maintained a continuing intention to appeal. I also find that, for the reasons below, the Commission will not suffer

any prejudice if an extension of time is given. Therefore, in the interests of justice, I allow an extension of time to file his appeal to the Appeal Division.

[6] As noted above, the Applicant is appealing against a decision of the General Division which, having found that the Applicant's appeal had been filed more than one year after being notified by the Commission of their refusal to reconsider their initial decision, dismissed his appeal as statute barred. According to ss. 52(2) of the *Act*, the General Division has no ability to grant an extension of time beyond one year after the reconsideration decision had been communicated to the Applicant. Although the General Division also explained why they would decline to grant an extension of time even if the appeal had been filed somewhat earlier (but still late), this was an alternative argument.

[7] In his initial application the Applicant did not explain what error, if any, had been made by the General Division. He submits that he did not have "the clarity of mind or sobriety to write to your office within the prescribed time periods, because my addiction took over my behavior [sic]" and states that he "look[ed] forward to hearing from you and any advice you can give me on how to get my 'resignation' changed into a 'firing'".

[8] For that reason, I asked for further submissions from the Applicant. Specifically, I asked that he provide full and detailed grounds of appeal as required by the *Act*. I also asked that he give a further explanation as to why his appeal had been filed late and noted that if he did not do so his appeal could be refused without further notice to him.

[9] The role of the Appeal Division is to determine if a reviewable error set out in ss. 58(1) of the *Act* has been made by the General Division and if so to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the Appeal Division to intervene. It is not our role to re-hear the case *de novo*.

[10] The Applicant responded with a letter which explained that his Employer had discriminated against him. The letter concluded by stating that the Applicant was "pleading with you to review my case with compassion".

[11] None of the points raised by the Applicant constitutes an enumerated ground of appeal, and he has not articulated any material error committed by the General Division member or suggested that his appeal was not filed over a year late as found by the member.

[12] In order to have a reasonable chance of success, the Applicant must explain in some detail how in their view at least one reviewable error set out in the *Act* has been made. Having failed to do so, this application for leave to appeal does not have a reasonable chance of success and must be refused.

*Mark Borer*

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Member, Appeal Division