



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 28

Date: January 19, 2016

File number: AD-16-149

APPEAL DIVISION

Between:

S. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

[1] The Tribunal refuses to grant an extension of time to file an application for permission to appeal.

INTRODUCTION

[2] On July 14, 2014, the General Division of the Tribunal determined that:

- The Applicant was employed in the occupation of teaching and was not entitled to benefits during the non-teaching period, pursuant to section 33 of the *Employment Insurance Regulations* (the “*Regulations*”).

[3] The Applicant requested leave to appeal to the Appeal Division on January 13, 2016. She received communication of the General Division decision in July 2014.

ISSUES

[4] The Tribunal must decide if it will allow the late application and if it does, it 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] In her application for permission to appeal, the Applicants indicates that she waited to see if she would get paid the following years as an LTO and she has been paid. She is therefore tracing her claim back for the years she did not get paid. She also delayed filing her application because she thought that she could not appeal a decision of the General Division.

[9] Paragraph 57(1) of the *Department of Employment and Social Development Act* prescribes that an application for leave to appeal must be made to the Appeal Division in the prescribed form and manner and within, (a) in the case of a decision made by the Employment Insurance Section, 30 days after the day on which it is communicated to the appellant.

[10] Paragraph 57(2) of the *Department of Employment and Social Development Act* indicates that 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.

[11] The decision of the General Division was communicated to the Applicant in July 2014.

[12] The Applicant brought her application for permission to appeal to the Appeal Division on January 13, 2016, more than one year after the day on which the General Division decision was communicated to her.

[13] In view of the above, the Tribunal has no choice but to refuse the late application of the Applicant.

CONCLUSION

[14] The Tribunal refuses to grant an extension of time to file an application for permission to appeal.

Pierre Lafontaine
Member, Appeal Division