



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. B. v. Canada Employment Insurance Commission*, 2016 SSTADEI 51

Tribunal File Number: AD-16-117

BETWEEN:

**A. B.**

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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DECISION BY: Pierre Lafontaine

DATE OF DECISION: January 29, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On December 4, 2015, 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 *Employment Insurance Act* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on January 6, 2016.

### **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] In regards to the application for permission to appeal, the Tribunal needs to be satisfied 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] In her application for leave to appeal, the Applicant pleads that the General Division erred when it wrote in her submissions (par. 15(a)) that she was making herself available for a supply teacher job when she is not a teacher and was making herself available for a supply secretary position. She submits that the decision of the General Division was based partially on that error. She also submits that the General Division did not consider her first attempt to apply for benefits on August 1<sup>st</sup>, 2015 and that her last day of work was July 7, 2015.

[10] The General Division determined that the legal test for good cause is whether the Applicant acted as a reasonable person in her situation would have done to satisfy herself as to her rights and obligations under the *Act*.

[11] The General Division wrote the following in the analysis section of its decision:

“[19] The evidence and submissions of the Appellant were that she thought that she would be employed in a supply position for the summer so she delayed filing for benefits. She had not realized her ROE was sent electronically until she discussed the issue with a co-worker. About August 1 she applied for benefits using her cell phone. She called Service Canada on August 27 and was informed that her application had not been received.

(...)

[24] The Member considered the reasons the Appellant provided for the antedate and finds that no evidence was presented with reasons that demonstrated good cause. She did not show good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made.

[25] The Member finds that the Appellant delayed in filing her claim for benefits and subsequent antedate request.

[26] The Member finds that the Appellant did not act as a reasonable person would have done to verify her rights and obligations under the Act.”

(Underlined by the undersigned)

[12] The General Division did consider that the Applicant delayed filing her application for benefits because she was making herself available for a supply position for the summer. It also considered in its decision that she had initially applied for benefits by cell phone on August 1, 2015 but that the application did not go through. The initial claim of the Applicant was in fact filed on August 27, 2015.

[13] The General Division determined that it was not the length of the delay that had to be considered but the reasons for it – *Canada (AG) v. McBride*, 2009 CAF 1. The General Division found that the Applicant did not show good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made. It concluded that the Applicant did not act as a reasonable person would have done to verify her rights and obligations under the *Act*.

[14] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of her request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Applicant has not set out a reason which falls into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

## **CONCLUSION**

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

*Pierre Lafontaine*

Member, Appeal Division