



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Canada Employment Insurance Commission v. B. P.*, 2016 SSTADEI 117

Tribunal File Number: AD-16-265

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**B. P.**

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: February 26, 2016

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On January 25, 2016, the General Division of the Tribunal determined that:

- The Respondent met 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 February 11, 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] The Applicant submits that the General Division based its decision on an erroneous finding of fact made in a perverse manner ignoring the material before it and erred in law by misinterpreting the legal test for good cause.

[10] She argues that the Federal Court of Appeal (FCA) supports that good cause under section 10(4) of the *Act* must apply throughout the entire period of delay. The Applicant submits that the facts of the case show that from October 4, 2014, the Respondent was capable of working and in fact looked for and secured some work.

[11] The Applicants pleads that the General Division then erred when it found the Respondent's her illness at the time she left employment, her age and her continuous employment to be valid reasons to allow the lengthy antedate. The facts of this case show the Respondent along with ignorance of the law chose not to file a claim for benefits as she had hoped to secure other employment sooner.

[12] The applicant argues that the FCA holds that an intention not to make a claim for benefits but rather to seek other employment is not good cause pursuant to section 10(4) of the *Act*.

[13] Finally the Applicant submits that the General Division erred in law when it allowed the appeal finding the Respondent acted like a reasonable person in that situation would have done and through that lense allowed the appeal. However, the correct legal test for good cause is did the claimant do what a reasonable person would do in situation, throughout the entire period of delay, to satisfy themselves of both their rights and their obligations under the legislation. There is a requirement for an individual to take prompt steps to determine entitlement to benefits. The Respondent made no enquiries with the Commission but relied on guidance from friends and her own misinterpretation of the legislation.

[14] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of its request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

## **CONCLUSION**

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

*Pierre Lafontaine*

Member, Appeal Division