



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. H. v. Canada Employment Insurance Commission*, 2016 SSTADEI 210

Tribunal File Number: AD-16-309

BETWEEN:

G. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Mark BORER

DATE OF DECISION: April 19, 2016

DECISION: Leave to appeal refused

DECISION

[1] On December 23, 2015, a General Division member determined that the appeal of the Applicant from the previous determination of the Commission could not be considered because it was brought more than a year after the reconsideration decision was communicated to the Applicant. In due course, the Applicant filed an application requesting leave to appeal to the Appeal Division.

[2] Subsection 58(1) of the *Department of Employment and Social Development Act* (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] The only issue before the General Division member was whether or not the Applicant’s appeal to the General Division had been brought in time. According to ss. 55(2) of the Act, the General Division cannot allow further time within which an appeal can be filed if that appeal has been brought more than one year after the reconsideration decision was communicated to the Applicant.

[5] In his decision, the General Division member determined that the Applicant’s appeal had been brought more than a year after the reconsideration decision was communicated to him. As such, the member determined that he had no jurisdiction to allow the appeal to proceed.

[6] In his application, the Applicant noted that the General Division ruled in favour of a number of his colleagues in June 2015. The Applicant therefore asked that he be permitted to share in their success, even though his appeal was not part of their group appeal and had been filed late, because “there has to be an exception to this rule”. He did not articulate any particular error committed by the General Division member.

[7] Noting that the Applicant’s appeal was not complete because the grounds of appeal were not sufficiently detailed, Tribunal staff contacted the Applicant by letter to ask for further details. Specifically, the Tribunal asked that he provide full and detailed grounds of appeal as required by the Act, and provided him with examples of what constitutes grounds of appeal. The Tribunal letter also noted that if he did not do so, his application could be refused without further notice.

[8] In response to this letter, the Applicant stated that “the [Employment Insurance] Act is clear [on late appeals], but why cannot an exception be made because this decision is essentially contrary to common law and what is legal and fair?”

[9] It is settled law that no Tribunal member is permitted to ignore the Act, no matter how sympathetic the circumstances.

[10] 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.

[11] In order to have a reasonable chance of success the Applicant must explain how at least one reviewable error has been made by the General Division. 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

Member, Appeal Division