



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. D. v. Canada Employment Insurance Commission*, 2016 SSTADEI 325

Tribunal File Number: AD-16-771

BETWEEN:

M. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 22, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On October 16, 2015, the Tribunal's General Division found as follows:

- the application for leave to appeal before the Tribunal's General Division was not filed within the prescribed period in accordance with subsection 52(2) of the *Department of Employment and Social Development Act*.

ISSUE

[3] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[4] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* ("the DESD Act") provide that "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and that the Appeal Division "must either grant or refuse leave to appeal."

[5] 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

[6] 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.

[7] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the application for leave to appeal stage, the Applicant does not have to prove his case.

[8] The Tribunal will grant leave to appeal if it is satisfied that any of the above grounds of appeal has a reasonable chance of success.

[9] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of law, fact, or jurisdiction to which the response might justify setting aside the decision under review.

[10] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[11] The Applicant repeats in his application for leave to appeal that he was not living in Montreal but rather in the Gaspésie region. He submitted several documents in support of his argument.

[12] Subsection 52(1) of the DESD Act provides that an appeal of a decision must be brought to the General Division in the prescribed form and manner and within, (a) in the case of a decision made under the *Employment Insurance Act*, 30 days after the day on which it is communicated to the appellant.

[13] Section 25 of the *Social Security Tribunal Regulations* provides that a person who does not file an appeal within the time limits set out in subsection 52(1) of the DESD Act may request an extension of time by filing their appeal with a statement setting out the reasons why the General Division should allow further time for the bringing of the appeal.

[14] However, subsection 52(2) of the DESD Act provides that the General Division may extend the time within which an appeal may be brought by up to one year.

[15] The Applicant is of the view that he filed his application with the General Division within the statutory time period. He contends that it is the Respondent that did not do its work by failing to forward his appeal application to the General Division.

[16] It appears from the evidence before the General Division that the Applicant had knowledge of the Respondent's decision dated May 31, 2013, when he filed his appeal application with Service Canada on June 7, 2013. And yet the decision of May 31, 2013, clearly states, "If you do not agree with one of our decisions made following your request for reconsideration, you can file an appeal with the Social Security Tribunal." The Applicant's appeal was not filed with the General Division until September 9, 2015, more than two years after the Respondent's decision was communicated to the Applicant.

[17] The General Division therefore could not consider the situation that led the Applicant to act so late since it had no authority to extend the time to file the application for leave to appeal to one year.

[18] The Tribunal has no other choice but to find that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division