



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 371

Tribunal File Number: AD-16-713

BETWEEN:

J. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

LEAVE TO APPEAL DECISION BY: Pierre Lafontaine

DATE OF DECISION: July 14, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On April 28, 2016, the General Division of the Tribunal decided that:

- An extension of time for the Applicant to appeal to the General Division of the Social Security Tribunal was refused.

[3] The Applicant is deemed to have requested leave to appeal to the Appeal Division on May 20, 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] The present decision is written in English to ensure uniformity and continuity with the decision of the General Division.

[8] 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.

[9] 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.

[10] The representative of the Applicant argues that the agent of the Respondent rendered a reconsideration decision that was never communicated to him even if he was the representative of the Applicant on file. He submits that the problems with the delay in filing the appeal started at that moment. He was later overburden with work during the tax season and did not have time to answer the letter of the General Division dated March 23, 2016 that was requesting information regarding the delay in filing the appeal to the General Division. He was certain that he could obtain an extension of time like he normally does with his files at the *Canada Revenue Agency*. The General Division however immediately rendered its decision on April 28, 2016.

[11] The representative of the Applicant is asking the Tribunal to reconsider the delay to appeal since it was not the fault of the Applicant if he did not have time to respond on his behalf. He finally submits that the General Division should have granted the extension of time in the interest of justice.

[12] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant raises questions regarding the interpretation and application by the General Division of section 52.(2) of the *DESD Act*.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division