Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *D. G. v. Canada Employment Insurance Commission*, 2016 SSTADEI 555

Tribunal File Number: AD-16-1207

BETWEEN:

**D. G.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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# SOCIAL SECURITY TRIBUNAL DECISION
## Appeal Division

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Leave to appeal decision by: Pierre Lafontaine

Date of decision: November 22, 2016

Canada

## REASONS AND DECISION

### DECISION

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

### INTRODUCTION

[2] On September 6, 2016, the Tribunal's General Division concluded that the Applicant had not accumulated a sufficient number of hours of insurable employment to qualify for Employment Insurance benefits under section 7 of the *Employment Insurance Act* (Act).

[3] On October 18, 2016, the Applicant filed an application for leave to appeal before the Appeal Division after having received the General Division's decision on September 20, 2016.

### ISSUE

[4] The Tribunal must determine whether the appeal has a reasonable chance of success.

### THE LAW

[5] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, "[a]n 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 *Department of Employment and Social Development Act* states that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

## ANALYSIS

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

> (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] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for the applicant to meet 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.

[9] 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.

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

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

[12] The Applicant submits that the General Division failed to observe a principle of natural justice. He underscores that his misconduct had nothing to do with his employment and that he is accountable only to the Department of Justice. He states that the employment and justice departments are two completely separate departments and should not be used to

render a decision that concerns the other. He argues that he has paid his dues and that he is entitled to collect Employment Insurance benefits.

[13] The General Division stated the following in its decision:

> [translation]
>
> [24] In this case, the Act is clear and there is ample jurisprudence. The qualifying period cannot be extended due to the Appellant's incarceration, from September 2014 to December 2014. That being said, the hours of insurable employment must be calculated after his period of incarceration without the possibility of extending the reference period.
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> [25] The Tribunal finds that during the qualifying period that must be considered, namely from December 2014 to November 2015, the Appellant accumulated 321 hours whereas 665 hours are required to qualify for benefits.
>
> (Emphasis added by the undersigned)

[14] The Tribunal finds that paragraph 8(2)(*b*) of the Act is clear:

> A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable employment because the person was:
>
> (b) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the person was being held or any other offence arising out of the same transaction;

[15] In this case, the Applicant failed to prove to the General Division that he had not been found guilty of the offence for which he was held. It is therefore not possible to extend the qualifying period. Unfortunately, the evidence shows that the Applicant had accumulated only 321 hours of insurable employment during his qualifying period whereas the Act requires 665 hours.

[16] Furthermore, the Applicant had received adequate notice of the hearing before the General Division and he had the opportunity to be heard. Prior to the hearing, he was also able to review the claims submitted in his file and had the opportunity to respond. An unfavourable decision from the General Division based on the law,

regulations, and jurisprudence does not constitute a breach of the principles of natural justice.

[17] For the reasons stated above, the Tribunal concludes that the appeal has no reasonable chance of success.

**CONCLUSION**

[18] Leave to appeal is refused.

Pierre Lafontaine
Member, Appeal Division