



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. F. v. Canada Employment Insurance Commission*, 2017 SSTADEI 17

Tribunal File Number: AD-16-1358

BETWEEN:

J. F.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: January 23, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On October 29, 2016, the General Division of the Tribunal determined that the Applicant failed to meet 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*.

[3] The Applicant requested leave to appeal to the Appeal Division on December 8, 2016, after receiving communication of the General Division decision on November 9, 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:

- 1) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- 2) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- 3) 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 Applicant needs to satisfy the Tribunal 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, in her leave to appeal application, essentially argues that her reasons for delaying her application were not taken into consideration. She was consumed at the time by many functions that were deemed a priority. She does not consider her lack of awareness to be ignorant or unreasonable.

[10] On December 21, 2016, the Tribunal requested that the Applicant supply her detailed grounds of appeal by January 20, 2017. The Tribunal did not receive a reply from the Applicant.

[11] When it dismissed the appeal of the Applicant, the General Division concluded that:

[23] In this case, there is no evidence to support that exceptional circumstances prevented the Claimant from making enquiries about her rights and obligations and/or applying for benefits at any time throughout the 6 year period of delay. The Member considered and understands that the Claimant was under a lot of stress given the illness and subsequent death of her mother during this period. The Member also acknowledges that because she remained/remains unemployed, she endured financial hardship. The Member finds however, that despite her dire situation, the Claimant still did not make any enquiries at a Service Canada office or website throughout the entire period of delay. Had she done so, she would have been informed of her potential eligibility for employment insurance benefits and directed to submit an application as she did on January 20, 2015 even without an ROE in

hand (she receive the ROE in May 2015). The Member agrees with the Commission that the Claimant may have been dealing with difficult personal issues however her circumstances were not exceptional so that they prevented her from submitting her application, or informing herself of her rights and responsibilities, at any time during the lengthy 6 year period of delay.

[12] The General Division concluded that there was no evidence of any exceptional circumstances that prevented the Applicant from making enquiries about her rights and obligations, and/or applying for benefits at any time throughout the 6 year period of delay.

[13] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of her request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division