



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. S. v. Canada Employment Insurance Commission*, 2017 SSTADEI 34

Tribunal File Number: AD-17-9

BETWEEN:

P. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of decision: January 26, 2017

REASONS AND DECISION

[1] Previously, a General Division member determined that the Applicant's appeal 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 he received his reconsideration decision “late”, but for unknown reasons did not say when he received it. Unfortunately, he also failed to 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, I asked Tribunal staff to contact the Applicant by letter to ask for further details. Specifically, the letter 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 made a number of arguments regarding the underlying merits of his appeal, including a request that I “have [his] entire penalty waived”. Although he explained that he did not have a physical copy of his reconsideration decision at the time he filed his appeal (and it took time to receive a new one) he again did not state when he received it initially.

[9] Even if I accept (which I do not) that the reconsideration decision was only communicated to the Applicant the very same day that he filed his initial appeal to the General Division (a number of months after the reconsideration decision was made), it still took more than one year from that day for the Applicant to provide the information required by law complete his General Division appeal.

[10] It is settled law that no Tribunal member is permitted to ignore the Act, no matter how sympathetic the circumstances. As such, the General Division member had no choice according to the Act but to refuse to accept the Applicant’s appeal.

[11] 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.

[12] 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