



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 60

Tribunal File Number: AD-17-72

BETWEEN:

**D. B.**

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: February 15, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **INTRODUCTION**

[2] On December 23, 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 subsection 10(4) of the *Employment Insurance Act* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on January 25, 2017, after receiving communication of the General Division decision on January 9, 2017.

### **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* (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:

- 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] 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 she made strong efforts to obtain her Record of Employment (ROE) from her employer. If she had known she could apply for benefits without the ROE, she would have applied as soon as possible. Although she did attempt to look for work during the relevant period, she did not find a job.

[10] A prospective claimant in the Applicant's position is expected to take reasonably prompt steps to understand her rights and obligations under the Act. As part of this requirement, the Respondent was expected to make reasonable inquiries to verify her belief that an ROE was necessary to apply for benefits. An obvious place to enquire would have been the Respondent – *Canada (A.G.) v. Innes*, 2010 FCA 341, *Canada (A.G.) v. Trinh*, 2010 FCA 335.

[11] As stated by the General Division, the Federal Court of Appeal has found that claimants who delay in applying for benefits because their employer failed to issue, or delayed issuing, a ROE was not good cause - *Canada (A.G.) v. Chan*, A-185-94, *Canada (A.G.) v. Brace*, A-481-07.

[12] Jurisprudence of the Federal Court of Appeal has also consistently held that a delay in applying based on the expectation of finding employment or a good faith reliance on one's own resources does not constitute good cause for purposes of subsection 10(4) of the Act. Unfortunately, waiting to find work rather than immediately applying for benefits, while laudable, does not provide good cause for delay as required by legislation – *Howard v. Canada (A.G.)*, 2011 FCA 116.

[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