



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 78

Tribunal File Number: AD-17-140

BETWEEN:

J. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 1, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On December 30, 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 pursuant to subsection 10(5) of the *Employment Insurance Act* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on February 10, 2017 after receiving communication of the decision of the General Division on January 12, 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 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.

[9] The Applicant, in her leave to appeal application, argues that the length of time involved in her delay is not a determinative factor, and that the General Division misapplied the law by focusing purely on the span of time, and not the legal principle of cause for delay. The Applicant submits that the law requires a contextual analysis based on a variety of factors beyond simply the length of time, and cannot be distinguished based on such.

[10] She pleads that the test for good cause requires a consideration of the length of the delay, any prejudice occasioned to administration of unemployment insurance system by the delay, sophistication of claimant, degree of experience a claimant has with the system, the type of benefits being claimed and the immediate cause of delay, and notes that this is not an exhaustive listing.

[11] She submits that the General Division misapplied the analysis of subsection 10(5) in requiring an interpretation that every day must be accounted for, rather than simply whether the Applicant, as a whole, acted in the way a reasonable person would.

[12] 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 a reasonable chance of success. The Applicant has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division