



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. L. v. Canada Employment Insurance Commission*, 2017 SSTADEI 106

Tribunal File Number: AD-17-213

BETWEEN:

E. 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 16, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On February 2, 2017, 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*.

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

ISSUE

[4] The Tribunal must decide whether 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 “[l]eave 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 regard to the application for leave 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 submits that the General Division based its decision on erroneous findings of facts. She details the erroneous facts in her application for leave to appeal. She pleads that these facts were important in order to correctly apply the antedate legal test. She submits that the facts retained by the General Division to dismiss her antedate claim contain crucial discrepancies.

[10] After reviewing the docket of appeal and 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 that fall into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[11] The Tribunal grants leave to appeal.

Pierre Lafontaine
Member, Appeal Division