



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. T. v. Canada Employment Insurance Commission*, 2017 SSTADEI 152

Tribunal File Number: AD-17-153

BETWEEN:

L. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 12, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On January 20, 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, pursuant to subsection 10(5) of the *Employment Insurance Act* (Act).

[3] The Applicant is presumed to have requested leave to appeal to the Appeal Division on February 15, 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, in her leave to appeal application, argues that she acted as soon as possible given her circumstances. A possible conversion to regular benefits was not mentioned to her by the Respondent. A friend of hers, however, was advised of that right without having to ask the Respondent.

[10] On March 2, 2017, the Tribunal sent a letter to the Applicant requesting that she detail her grounds of appeal, and not repeat what she had already mentioned to the General Division. The Applicant replied to the Tribunal on March 31, 2017.

[11] In her reply to the Tribunal, the Applicant stated that she knows two other people who also had circumstances requiring sickness benefits and they both were informed about their rights for a conversion to regular benefits. This seemed inconsistent to her. She would think a reasonable person would respect the provisions of the Act and try their best to concentrate on returning to work as soon as possible, rather than searching for some possible entitlement that they are unaware exists.

[12] The Applicant pleads that she was concentrating on getting back to work, which she did after the three weeks, and it was only by chance that she and a friend were discussing the work situation as being cut back to two days in February that she became aware of the possibility of the conversion to regular benefits. She pleads that if she had received an overpayment, she would be expected to pay it back as soon as she became aware of it and she therefore feels that natural justice should work equally in the other direction, as she did act as soon as she found out about her eligibility for a conversion to regular benefits. She feels she did her best to act upon the circumstances and to forward the details regarding her application as soon as she became aware of her entitlement.

[13] 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 Applicant was expected to make reasonable inquiries to verify whether she was entitled to regular benefits after recovering in September 2015. An obvious place to enquire would have been with the Respondent— *Canada (A. G.) v. Innes*, 20110 FCA 341, *Canada (A. G.) v. Thrinh*, 2010 FCA 335.

[14] As stated by the General Division, unless there are exceptional circumstances, which the Tribunal does not find in this case, a reasonable person is expected to take reasonably prompt steps to understand their entitlement to benefits and obligations under the Act— *Canada (A. G.) v. Kaler*, 2011 FCA 266. This case stands for the proposition that ignorance of the Employment Insurance laws is not an excuse for failing to submit a claim to the Respondent in a timely manner.

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

CONCLUSION

[16] The Tribunal refuses leave to appeal to the Appeal Division of the Tribunal.

Pierre Lafontaine

Member, Appeal Division