



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. F. v. Canada Employment Insurance Commission*, 2017 SSTADEI 254

Tribunal File Number: AD-16-578

BETWEEN:

**C. F.**

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: July 5, 2017

## **REASONS AND DECISION**

### **DECISION**

[1] The Social Security Tribunal of Canada (Tribunal) grants the Applicant an extension of time to file his application for leave to appeal but refuses leave to appeal to the Appeal Division.

### **INTRODUCTION**

[2] On December 30, 2015, the Tribunal's General Division determined that the Applicant was to be disentitled to benefits for failing to prove his availability for work pursuant to paragraph 18(1)(a) of the *Employment Insurance Act* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on April 15, 2016. The General Division decision is deemed to have been communicated to the Applicant on or around January 13, 2016.

### **ISSUES**

[4] The Tribunal must decide whether it will allow the late application and 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] Regarding the late application for leave to appeal, the Tribunal notes that a Member of Parliament filed the appeal on the Applicant's behalf. The letter of appeal is dated February 25, 2016, but it was actually filed with the Tribunal on April 15, 2016. When considering the deemed date of reception of the General Division decision, it is reasonable to conclude that the Applicant did consult with his Member of Parliament within the legal timelines but that his appeal was filed late through no fault of the Applicant.

[9] The Tribunal finds, in the present circumstances, that it is in the interests of justice to grant the Applicant's request for an extension of time to file his application for leave to appeal without prejudice to the Respondent —*X (Re)*, 2014 FCA 249; *Grewal c. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[10] Regarding the application for leave to appeal, before leave can be granted, 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.

[11] The Applicant participated in the hearing before the General Division via teleconference. A Polish interpreter also attended and translated during the proceedings.

[12] After considering the evidence, including the Applicant's oral testimony, the General Division found that the Applicant was unable to meet the onus placed upon him to demonstrate his availability from December 28, 2014, pursuant to paragraph 18(1)(a) of the Act.

[13] In his initial application for leave to appeal, the Applicant basically reiterated the facts that he had submitted to the General Division for review and consideration.

[14] The Tribunal sent a letter to the Applicant on April 20, 2016, requesting that he submit his grounds of appeal and that he explain, by May 23, 2016, at the latest, why his appeal had a reasonable chance of success. The Tribunal received no answer to said letter.

[15] The Tribunal proceeded to send a second letter on June 12, 2017, requesting that the Applicant explain his grounds of appeal, with a deadline of July 7, 2017. The Applicant replied on June 27, 2017.

[16] In his reply, the Applicant stated that, while he was submitting his application for benefits, no Polish-English translator was present in the offices of Service Canada and the Canada Employment Insurance Commission. Therefore, he did not fully understand the principles of Employment Insurance. The Respondent's agent delayed his application for benefits for a long time. His mental health and physical health were not good, and he did not receive any help from the Respondent's agent to resolve his problems.

[17] The Tribunal can come only to the conclusion that the Applicant is asking this Tribunal to re-evaluate and reweigh the evidence that was already submitted to the General Division, which is the province of the trier of fact and not of an appeal court. It is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or to explore the merits of the General Division decision.

[18] At the General Division hearing, the Applicant testified, with the assistance of a translator, that he had no time or motivation to look for work, and that after fifty years of working, he did not have to prove anything. The Applicant argued that his condition had deteriorated and that he had received no help from Service Canada.

[19] Unfortunately for the Applicant, paragraph 18(1)(a) of the Act clearly provides that a claimant is not entitled to be paid benefits for any working day in a benefit period for which the claimant **fails to prove** that on that day, the claimant was capable of working, available for work and unable to obtain suitable employment.

[20] The Tribunal finds that the General Division correctly applied the decision of the Federal Court of Appeal in *Faucher v. Canada (Employment and Immigration Commission)*, 1997 CanLII 4856 (FCA), to the facts of the present case.

[21] For the above-mentioned reasons, as well as after reviewing the appeal docket, the General Division decision and the Applicant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

## **CONCLUSION**

[22] The Tribunal grants the extension of time to file an application for leave to appeal but refuses leave to appeal to the Appeal Division.

Pierre Lafontaine

Member, Appeal Division