



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *N. D. v. Canada Employment Insurance Commission*, 2017 SSTADEI 256

Tribunal File Number: AD-17-430

BETWEEN:

**N. D.**

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) refuses leave to appeal to the Tribunal's Appeal Division.

### **INTRODUCTION**

[2] On May 8, 2017, the Tribunal's General Division determined the following:

- The Respondent exercised its discretion in a judicial manner in refusing the Applicant's request to extend the 30-day period to make a request for reconsideration of a decision under section 112 of the *Employment Insurance Act* and section 1 of the *Reconsideration Request Regulations*.

[3] The Applicant is deemed to have requested leave to appeal to the Appeal Division on June 2, 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] Regarding the application for leave to appeal, before leave to appeal 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.

[9] In his application for leave to appeal, the Applicant states that the General Division did not take into consideration the fact that a dismissal of his appeal would cause him further financial hardship. He submits that if the General Division decision is upheld, it will also affect him physically and mentally. He argues that the General Division did not consider the consequences on him and his family when it maintained the Respondent's decision.

[10] The Tribunal sent a letter to the Applicant dated June 9, 2017, requesting that he explain in detail his grounds of appeal. The Applicant replied on June 29, 2017.

[11] The Applicant states that he was the only one who attended the hearing and that he did not have a chance to question the Respondent. His questions on the penalty therefore remain unanswered. He submits that the General Division also ignored several letters that he sent to the Respondent requesting a deferral of the outstanding debt. He wants a new trial with both parties in attendance.

[12] Unfortunately, an appeal to the Tribunal's Appeal Division is not a *de novo* hearing, where a party can present evidence and hope for a new, favourable outcome.

[13] After reviewing the Applicant's evidence, the General Division determined that he did not have a reasonable explanation for the delay in making the request and did not demonstrate a continuing intention to request reconsideration.

[14] Letters advising the Applicant of the Respondent's decisions were mailed to him on September 17, 2012. None of these letters was returned to the Respondent as "undeliverable." Two separate notices of debt were mailed to the Applicant on September 15 and 22, 2012. Neither of these was returned as "undeliverable." Notes in the Departmental Accounts Receivable System show that the Applicant contacted the Canada Revenue Agency's Debt Management Call Centre on December 3 and 11, 2012. The notes indicate that the Applicant was inquiring about the overpayment established on his claim.

[15] The Applicant still did not submit a request for reconsideration until June 28, 2016, which is more than three-and-a-half years after the original decision letters had been mailed to him.

[16] Furthermore, there was no reason for the General Division to dismiss the Respondent's evidence because the Applicant did not have an opportunity to cross-examine the Respondent—*Olivier*, A-308-81. The Applicant was aware of the Respondent's evidence prior to appearing before the General Division, and had ample time to prepare his defence. The General Division allowed him to present his arguments in respect of the entire case before it, and the Applicant had an opportunity to dispute the Respondent's position.

[17] 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**

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

Pierre Lafontaine  
Member, Appeal Division