



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *N. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 263

Tribunal File Number: AD-17-127

BETWEEN:

**N. G.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

HEARD ON: July 6, 2017

DATE OF DECISION: July 11, 2017

## **REASONS AND DECISION**

### **DECISION**

[1] The appeal is dismissed.

### **INTRODUCTION**

[2] On January 19, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) decided not to allow an extension of time for the Appellant to appeal to the General Division.

[3] The Appellant is deemed to have requested leave to appeal to the Appeal Division on February 8, 2017. Leave to appeal was granted on March 16, 2017.

### **TYPE OF HEARING**

[4] The Tribunal held a teleconference hearing for the following reasons:

- the complexity of the issue under appeal;
- the credibility of the parties was not anticipated being a prevailing issue;
- the information in the file, including the need for additional information; and
- the requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness, and natural justice permit.

[5] The Appellant attended the hearing. The Respondent did not attend despite having received the notice of hearing.

### **THE LAW**

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (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.

## **ISSUE**

[7] The Tribunal must decide whether the General Division erred when it refused to allow further time for the Appellant to bring an appeal before the General Division under subsection 52(2) of the DESD Act.

## **SUBMISSIONS**

[8] The Appellant submits the following arguments in support of her appeal:

- The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.
- Since filing her appeal in October 2015, she has followed her file closely and has been proactive in ensuring that she has sent every document required of her and that they have been received by the Respondent, the Canada Revenue Agency and the Tribunal.
- On February 26, 2016, she was informed that the Tribunal had not received, by mail or by fax, the Reconsideration Letter that was required to accompany her appeal. She had mailed the Reconsideration Letter to the Post Office Box provided to her in January, but she had not heard back.
- She had also called her Member of Parliament's office seeking support and clarity in the matter. Her Member of Parliament in Ottawa suggested that she

send all paperwork through his office to ensure that her proactive actions were noticed, but the office failed to submit the required documents when they needed to be submitted, and that is why the request for an extension of time was necessary.

- She did everything a citizen could possibly have done to be proactive and to ensure the Tribunal had everything it needed to fairly assess her appeal.
- The Respondent should have informed her that there was a 14-day limit to conduct a job search outside of Canada.

[9] The Respondent submits the following arguments against the appeal:

- The decision to grant an extension of time to file an appeal is a discretionary one and not all the criteria to allow an extension of time must be met. The Respondent maintains that the Appellant has provided no argument or evidence to support an arguable case. The General Division decision to deny the delayed appeal is reasonable given the evidence, legislation and jurisprudence.
- The General Division committed no reviewable error in denying an extension of time and its decision was a reasonable one that conforms to the DESD Act, as well as to the established case law.
- There is nothing in the General Division's decision to suggest that it was biased against the Appellant in any way or that it did not act impartially; nor is there is any evidence to show that there was a breach of natural justice in this case.

## **STANDARD OF REVIEW**

[10] The Appellant made no submissions related to the applicable standard of review.

[11] The Respondent submits that the Appeal Division does not owe any deference to the General Division's conclusions with respect to questions of law, whether or not the error appears on the face of the record. However, for questions of mixed fact and law and questions of fact, the Appeal Division must show deference to the General Division. It can

intervene only if 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—*Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

[12] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (Attorney General) v. Jean*, 2015 FCA 242, indicates in paragraph 19 of its decision that when the Appeal Division “acts as an administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court.”

[13] The Federal Court of Appeal further indicates that “[n]ot only does the Appeal Division have as much expertise as the General Division of the Social Security Tribunal and thus is not required to show deference, but an administrative appeal tribunal also cannot exercise the review and superintending powers reserved for higher provincial courts or, in the case of “federal boards”, for the Federal Court and the Federal Court of Appeal.”

[14] The Federal Court of Appeal concludes that when the Appeal Division “hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.”

[15] The mandate of the Tribunals’ Appeal Division as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

[16] In accordance with the above instructions, unless the General Division failed to observe a principle of natural justice, erred in law, 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, the Tribunal must dismiss the appeal.

## **ANALYSIS**

[17] In this case, the General Division concluded that the Appellant had failed to meet two of the factors set out in *Canada (Minister of Human Resources Development) v.*

*Gattellaro*, 2005 FC 883, for which an additional extension may be granted. According to the General Division, most importantly, the Appellant had no arguable case that would justify the appeal proceeding on the merits.

[18] For the appeal to be allowed, the Appellant must demonstrate that the General Division inappropriately exercised its discretionary power when it refused to grant an extension of time. An improper exercise of discretion occurs when a member gives insufficient weight to relevant factors, proceeds on a wrong principle of law, erroneously misapprehends the facts, or where an obvious injustice would result.

[19] The Appellant had been in New York City on a job search from January 24 to February 11, 2015. The Respondent applied the exception in paragraph 55(1)(f) of the *Employment Insurance Regulations* (Regulations), which permitted the Appellant to be outside of Canada “for a period of not more than 14 consecutive days to conduct a bona fide job search.” The Appellant was three days over the consecutive 14-day limit.

[20] As stated by the General Division, given the undisputed facts about the January 24 to February 11, 2015, absence from Canada, the clear language of the exception in paragraph 55(1)(f) of the Regulations, and the absence of any authority for the Tribunal to vary the 14-day time limit set out in that exception, there is no arguable case that warrants proceeding with the appeal.

[21] In this case, it would certainly not be in the interests of justice to hear the appeal on the merits.

[22] For the above-mentioned reasons, the Tribunal finds that the General Division properly exercised its discretion in the present case. The General Division gave sufficient weight to all relevant factors, did not proceed on a wrong principle of law, did not erroneously misapprehend the facts, and no obvious injustice would result in refusing the extension of time.

## **CONCLUSION**

[23] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division