



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. S. v. Canada Employment Insurance Commission*, 2017 SSTADEI 311

Tribunal File Number: AD-17-575

BETWEEN:

J. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 28, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On July 11, 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* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on August 14, 2017, after receiving the General Division decision on July 25, 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] With respect to 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.

[9] The Applicant submits that the General Division based its decision on erroneous findings of fact, which are detailed in her application for leave to appeal. She also submits that the General Division put all the responsibility for the delay on her, but that it failed to consider that the delay was caused by the Respondent's failure or negligence in offering claimants suitable and effective methods of communication. Contrary to the conclusions of the General Division, she did what a "reasonable and prudent" person in her situation would have done to satisfy herself as to her rights and obligations under the Act.

[10] Upon review of the appeal docket, the General Division decision, and after considering the Applicant's arguments 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 one of the above-enumerated grounds of appeal that could possibly lead to the reversal of the contested decision.

CONCLUSION

[11] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine
Member, Appeal Division