



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. S. v. Canada Employment Insurance Commission*, 2017 SSTADEI 361

Tribunal File Number: AD-17-637

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: October 16, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On August 11, 2017, the General Division of the Tribunal decided that an extension of time for the Applicant to appeal to the General Division of the Tribunal was to be refused. The Applicant requested leave to appeal to the Appeal Division on September 19, 2017. She is deemed to have received the General Division decision on August 24, 2017.

ISSUE

[3] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[4] 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.”

[5] 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

[6] 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.

[7] As regards 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.

[8] The General Division concluded that more than one year had passed from when the reconsideration decision was communicated to the Applicant, that being December 14, 2015, and when a complete appeal was filed, that being January 10, 2017. It applied subsection 52(2) of the DESD Act, which states that in no case may an appeal be brought more than one year after the reconsideration decision was communicated to the applicant.

[9] The Applicant argues that she had initially sent her notice of appeal in June 2016 but received no reply from the General Division. After being advised by the General Division that no appeal had been received, she filed another application on November 30, 2016. In her second application for leave, she mentioned the fact that her June application had not been processed by the General Division. She also states that, contrary to the conclusions of the General Division, her notice of appeal was completed within the one-year limit since the alleged missing information requested by the General Division on December 1, 2016, was already in the file.

[10] After reviewing the appeal docket and the General Division decision, and after considering the arguments of the Applicant in support of her request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant raises questions regarding the General Division's interpretation and application of subsection 52(2) of the DESD Act that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division