



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *B. T. v. Canada Employment Insurance Commission*, 2017 SSTADEI 380

Tribunal File Number: AD-17-652

BETWEEN:

**B. T.**

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: November 2, 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 August 28, 2017, the Tribunal's General Division found that the Applicant's appeal had not been brought within the time limit set out in subsection 52(2) of the *Department of Employment and Social Development Act* (DESD Act).

[3] The Applicant filed an application for leave to appeal to the Appeal Division on September 29, 2017, after receiving the General Division's decision dated August 29, 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 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] According to subsection 58(1) of DESD Act, 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] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the application for leave to appeal stage, the Applicant does not have to prove her case.

[9] The Tribunal will grant leave to appeal if it is satisfied that at least one of the above grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of law, fact or jurisdiction, the answer to which might justify setting aside the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In support of her application for leave to appeal, the Applicant argues that she filed her appeal before the General Division outside the prescribed time limit because she was taking care of her dying mother in 2011. She questions the General Division's refusal to hear her appeal. She perceives the refusal to hear the appeal as punishment for caring for her dying mother.

[13] In her notice of appeal to the General Division, submitted on March 10, 2017, the Applicant indicates that she received the Respondent's reconsideration decision on December 1, 2014.

[14] Subsection 52(1) of the DESD Act provides that an appeal of a reconsideration decision rendered by the Respondent must be brought to the General Division within 30 days after the day on which the decision was communicated to the Applicant.

[15] Subsection 52(2) of the DESD Act states that the General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought beyond a one-year delay. Therefore, the General Division has no discretion to extend the deadline beyond the one-year period for filing an appeal, even on the compassionate grounds raised by the Applicant.

[16] After reviewing the appeal file, the General Division's decision and the Applicant's arguments, the Tribunal finds that the General Division did not err in its interpretation and application of subsection 52(2) of the DESD Act. The Tribunal has no choice but to find that the Applicant's appeal has no reasonable chance of success.

## **CONCLUSION**

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

Pierre Lafontaine

Member, Appeal Division