



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. S. v. Canada Employment Insurance Commission*, 2017 SSTADEI 394

Tribunal File Number: AD-17-637

BETWEEN:

**J. S.**

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

DATE OF DECISION: November 10, 2017

## **REASONS AND DECISION**

### **DECISION**

[1] The appeal is allowed and the file returned to the General Division of the Social Security Tribunal of Canada (Tribunal) for a redetermination on whether an extension of time to file an appeal to the General Division should be allowed pursuant to section 52 of the *Department of Employment and Social Development Act* (DESD Act).

### **INTRODUCTION**

[2] The General Division concluded that more than one year had passed from when the reconsideration decision was communicated to the Appellant. 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 appellant.

[3] The Appellant 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. Leave to appeal was granted on October 16, 2017.

### **THE LAW**

[4] 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.

## **ISSUE**

[5] The Tribunal must decide whether the General Division erred when 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 appellant.

## **STANDARD OF REVIEW**

[6] The Federal Court of Appeal has determined that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the DESD Act. The Appeal Division does not exercise a superintending power similar to that exercised by a higher court: *Canada (Attorney General) v. Jean*, 2015 FCA 242; *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

[7] Therefore, 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**

[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 Appellant 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 (GD2-2).

[10] 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, namely the date the reconsideration decision was communicated to her, was already in the file.

[11] The Respondent respectfully submits that the General Division failed to address when the Appellant first submitted her appeal to the General Division. This evidence was before the General Division and there is no reference to said evidence in its analysis.

[12] The Respondent puts forward that even if the appeal was submitted in June 2016, it nevertheless would still have been a late appeal to the General Division pursuant to subsection 52(1) of the DESD Act. The Respondent's position is that the General Division erred when it failed to also consider the application of subsection 52(2) of the DESD Act.

[13] Given the foregoing, the Respondent submits that the Appellant has grounds for appeal under subsection 58(1) of the DESD Act and therefore requests that the Appeal Division, pursuant to subsection 59(1) of the DESD Act, return the case to the General Division for a redetermination on whether an extension of time to file an appeal to the General Division should be allowed pursuant to section 52 DESD Act.

[14] The Tribunal finds that the General Division did not consider the Appellant's evidence that she had initially sent her notice of appeal in June 2016 but had 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.

[15] Furthermore, there is evidence before the General Division that the reconsideration decision was communicated to the Appellant on December 4, 2015, by a representative of the Respondent. Therefore, the date the reconsideration decision was communicated to her, was already in the file.

[16] Did the General Division exercise its discretion in a judicial manner by refusing to grant the Appellant an extension of time to appeal? The Tribunal is of the opinion that the General Division did not exercise its discretion because it had concluded that the appeal was prescribed in accordance with subsection 52(2) of the DESD Act.

[17] For the above-mentioned reasons, the appeal is allowed.

## **CONCLUSION**

[18] The appeal is allowed and the file returned to the General Division for a redetermination on whether an extension of time to file an appeal to the General Division should be allowed pursuant to section 52 DESD Act.

Pierre Lafontaine

Member, Appeal Division