



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. M. v. Canada Employment Insurance Commission*, 2017 SSTADEI 440

Tribunal File Number: AD-17-684

BETWEEN:

J. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 18, 2017

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On September 27, 2017, the Tribunal's General Division determined that:

- the Respondent had not exercised its discretion in a judicial manner in denying the Applicant's request to extend the 30-day period to make a request for reconsideration of a decision under section 112 of the *Employment Insurance Act* (Act) and section 1 of the *Reconsideration Request Regulations* (Reconsideration Regulations); and
- the Applicant had failed to meet the legal test set out in subsections 1(1) and 1(2) of the Reconsideration Regulations in order to have his request for an extension of time allowed.

[3] The Applicant is deemed to have requested leave to appeal to the Appeal Division on October 16, 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] 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] In his application for leave to appeal, the Applicant, states that he asked the General Division for an adjournment because he was working up North. However, it was refused by the General Division, which went ahead with the hearing in his absence. He would very much like to give his side of the story. He argues that the General Division failed to observe a principle of natural justice.

[10] After reviewing the appeal docket and the General Division’s decision, and considering the Applicant’s arguments in support of his application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons that fall within the above-mentioned grounds of appeal, which could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division