



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. G. v. Canada Employment Insurance Commission*, 2018 SST 33

Tribunal File Number: AD-17-890

BETWEEN:

N. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: January 11, 2018

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 November 6, 2017, the Tribunal's General Division determined that the Applicant had failed to meet the onus placed upon him to demonstrate good cause for the entire period of the delay pursuant to subsection 10(5) of the *Employment Insurance Act* (Act).

[3] The Applicant is presumed to have requested leave to appeal to the Appeal Division on November 22, 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 to appeal 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 leave to appeal application, the Applicant puts forward that there was no follow-up correspondence regarding his 2008 claims or any claims for adjustment to his earnings or declarations. He states that some of his earnings were never confirmed and that any monies claimed to have been sent to him were never cashed. When he closed his application for benefits in 2008, the Respondent did not inform him to continue reporting his earnings. He states that he always reports his earnings. Some of his Records of Employment were completed as “fired” then changed to “quit.”

[10] On November 30, 2017, the Tribunal requested that the Applicant explain in detail why he was appealing the General Division’s decision regarding the antedate request. He was advised that it was insufficient to simply repeat what he had stated before the General Division. The Applicant replied to the Tribunal on January 4, 2018.

[11] The only issue before the General Division was the Applicant’s request to antedate his claim for sickness benefits to April 13, 2008. The General Division told the Applicant that it could not consider and decide other issues related to whether he had been previously underpaid benefits in other claims as he had alleged, or make a determination as to any restitution he believed he was owed as a result of incidents he had reported in the reconsideration file.

[12] In view of the Applicant's submissions in support of his application for leave to appeal, the Tribunal must reiterate that the only issue that was before the General Division was the Applicant's request to antedate his claim for sickness benefits to April 13, 2008.

[13] The General Division found that although the Applicant was busy working and living in shelters from 2008 to when he contacted the Respondent about antedating his claim in 2016, this did not excuse the Applicant from taking the steps that a reasonable person in his situation would have taken to satisfy himself as to his rights and obligations under the Act, far sooner than eight years after the 2008 shoulder injury that prompted his claim for benefits.

[14] The General Division found that the Applicant was not entitled to an antedate of his benefits claim for the period from 2008 to 2016 because he did not demonstrate good cause for the entire delay.

[15] During an initial telephone interview, the Applicant stated that he did not follow up on his benefits because he was working more than two jobs a day and was too busy working to call and ask about the payments (GD3-30).

[16] In his request for reconsideration, the Applicant stated that he was entitled to benefits due to his injury. He reiterated that he had applied late because he was working several jobs during that time and was unable to apply sooner (GD3-36).

[17] During a telephone interview in support of his request for reconsideration, he again stated that he did not apply sooner because he was working and living in shelters (GD3-104).

[18] A prospective claimant in the Applicant's position is expected to take reasonably prompt steps to understand their rights and obligations under the Act. As part of this requirement, the Applicant was expected to make reasonable inquiries with the Respondent far sooner than eight years after his injury to verify the status of his claim for benefits.

[19] In light of the above conclusion of the General Division, and the undisputed facts in support of said conclusion, the Tribunal is not convinced that the appeal has a reasonable chance of success. The Applicant has not set out a reason that falls within the above-mentioned grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[20] The Tribunal refuses leave to appeal to the Tribunal's Appeal Division.

Pierre Lafontaine
Member, Appeal Division