



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. N. v. Canada Employment Insurance Commission*, 2018 SST 179

Tribunal File Number: AD-17-351

BETWEEN:

K. N.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Pierre Lafontaine

Date of Decision: February 26, 2018

DECISION AND REASONS

DECISION

[1] The Social Security Tribunal of Canada refuses to grant an extension of time to file an application for leave to appeal.

INTRODUCTION

[2] On August 24, 2016, the Tribunal's General Division determined that the Applicant had brought his initial appeal to the Tribunal's General Division more than one year after the reconsideration decision was communicated to him by the Respondent and applied subsection 52(2) of the *Department of Employment and Social Development Act* (DESD Act).

[3] The Applicant requested leave to appeal to the Appeal Division on April 26, 2017. He is deemed to have received the General Division decision on September 3, 2016.

ISSUES

[4] The Tribunal must decide whether it will allow the late application and if it does, it 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] 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] In deciding whether to grant an extension of time to file an application for leave to appeal to the Appeal Division, the overriding consideration is whether the interests of justice favour granting the extension—*X (Re)*, 2014 FCA 249, *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[9] Relevant factors to consider are whether

- (a) there is an arguable case on appeal;
- (b) special circumstances justify the delay in filing the notice of appeal;
- (c) the delay is excessive; and
- (d) the Respondent will be prejudiced if the extension is granted.

[10] Although the Respondent would not be prejudiced by the delay in filing the application for leave to appeal, the Tribunal finds the eight-month delay in filing the application to be excessive. The Applicant has not raised any special circumstances that prevented him from filing his application within the prescribed timeframe.

[11] Furthermore, the Tribunal is not convinced that the Applicant has an arguable case or that the appeal has a reasonable chance of success.

[12] In his leave to appeal application, the Applicant claims that the case should be settled in his favour since he filed before the General Division the medical letter from Wellman Medical Group saying that he was sick, and unable to work during the period in which he received sickness benefits.

[13] However, the issue before the General Division was whether the Applicant should be allowed an extension of time for filing a late appeal to the General Division.

[14] The General Division concluded that the Applicant had brought his initial appeal more than one year after the reconsideration decision was communicated to him by the Respondent and applied subsection 52(2) of the DESD Act.

[15] The Respondent's reconsideration decision was communicated to the Applicant on November 13, 2014, and the General Division received an incomplete appeal on December 22, 2015, and subsequently a completed appeal on August 5, 2016.

[16] Even if the Tribunal were to consider the Applicant's appeal to the General Division completed on December 22, 2015, it was still filed more than a year after the reconsideration decision was communicated to the Applicant.

[17] Subsection 52(2) of the DESD Act clearly states that in no case may an appeal be brought before the General Division more than one year after the reconsideration decision was communicated to the Applicant.

[18] Furthermore, there is no specific medical certificate on file to support that the Applicant was incapable of working for each week during the relevant period from November 18, 2013, to March 8, 2014, pursuant to subsection 40(1) of the *Employment Insurance Regulations*.

[19] After considering all the above factors, the Tribunal is not convinced that the interests of justice favour granting the extension.

CONCLUSION

[20] The Tribunal refuses to grant an extension of time to file an application for leave to appeal.

Pierre Lafontaine
Member, Appeal Division