



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Canada Employment Insurance Commission v. D. G.*, 2018 SST 256

Tribunal File Number: AD-18-140

BETWEEN:

**Canada Employment Insurance Commission**

Applicant

and

**D. G.**

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: March 21, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **INTRODUCTION**

[2] On February 19, 2018, the Tribunal's General Division determined that the Respondent had demonstrated good cause for the entire period of the delay in making the initial claim for benefits pursuant to subsection 10(4) of the *Employment Insurance Act* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on March 1, 2018.

### **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* (DESDA), "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 DESDA 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 DESDA 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 regard to the application for leave to appeal, 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] The Applicant submits that the General Division did not apply the correct legal test and misinterpreted the decision in *Quadir v. Canada (Attorney General)*, 2018 FCA 21. It submits that to establish good cause, the jurisprudence of the Federal Court of Appeal requires that a claimant “be able to show that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act.” It is also settled law that a claimant has an obligation to take “reasonably prompt steps to determine her entitlement to Employment Insurance benefits” [*Canada (Attorney General) v. Carry*, 2005 FCA 367; *Canada (Attorney General) v. Kaler*, 2011 FCA 266]. The decision in *Quadir* does not modify the legal test.

[10] The Applicant puts forward that, in this case, the Respondent took no steps to contact the Applicant to make inquiries. Instead, she made a personal decision to wait for the outcome of her workers’ compensation claim and therefore failed to show “good cause” for a year-and-a-half delay in filing her claim.

[11] After reviewing the appeal docket, the General Division decision, and the Applicant’s arguments in support of its 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 into the above-enumerated grounds of appeal, which could possibly lead to the reversal of the disputed decision.

**CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division