



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. P. v. Canada Employment Insurance Commission*, 2018 SST 264

Tribunal File Number: AD-18-151

BETWEEN:

E. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 23, 2018

DECISION AND REASONS

DECISION

[1] The Social Security Tribunal of Canada refuses leave to appeal to the Appeal Division.

INTRODUCTION

[2] On February 6, 2018, the General Division of the Tribunal decided that an extension of time for the Applicant to appeal to the General Division of the Tribunal was to be refused pursuant to subsection 52(2) of the *Department of Employment and Social Development Act* (DESD Act), the appeal having been completed more than one year after the reconsideration decision was communicated to the Applicant.

[3] The Applicant requested leave to appeal to the Appeal Division on March 6, 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 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 considering 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 evidence before the General Division shows that more than one year had passed between when the Respondent communicated the reconsideration decision dated June 10, 2014, verbally and in writing to the Applicant and when a complete appeal was filed with the General Division.

[10] The Applicant filed an incomplete appeal with the General Division on June 10, 2014. The application was missing the reconsideration decision.

[11] On July 2, 2014, the Tribunal sent a letter to the Applicant informing him that his appeal was incomplete since it was missing a copy of the reconsideration decision being appealed and the date on which the reconsideration decision was communicated to him. On October 28, 2015, the Tribunal sent another letter to the Applicant stating that no reply to its July 2, 2014, letter had been received, and therefore, the file was closed.

[12] On August 15, 2017, the Applicant wanted the Tribunal to reopen the file. On September 25, 2017, the Applicant finally filed a copy of the reconsideration decision dated June 10, 2014, more than three years after the Tribunal's initial request.

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

[14] Unfortunately for the Applicant, he has not identified any errors of jurisdiction or law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it when coming to its decision to apply subsection 52(2) of the DESD Act.

[15] For the above-mentioned reasons and after reviewing the appeal docket and the General Division decision, and after considering the arguments of the Applicant in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[16] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine
Member, Appeal Division