



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *G. C. v. Canada Employment Insurance Commission*, 2018 SST 280

Tribunal File Number: AD-17-912

BETWEEN:

G. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of decision: March 27, 2018

DECISION AND REASONS

DECISION

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

INTRODUCTION

[2] On October 5, 2017, the Tribunal's General Division determined that the Respondent 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* (EI Act) and section 1 of the *Reconsideration Request Regulations* (Regulations).

[3] On November 27, 2017, the Applicant filed an application for leave to appeal to the Appeal Division after receiving the General Division's decision on October 30, 2017.

ISSUE

[4] The Tribunal must determine 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] According to subsection 58(1) of DESD Act, the only grounds of appeal are that:

- 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; and
- 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] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the applicant does not have to prove the case.

[9] The Tribunal will grant leave to appeal if it is satisfied that at least one of the stated grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must, in accordance with subsection 58(1) of the DESD Act, be in a position to determine whether there is a question of law, fact or jurisdiction, the answer to which may justify setting aside the decision under review.

[11] In light of the above, does the Applicant's appeal have a reasonable chance of success?

[12] The Applicant is seeking leave to appeal under paragraphs 58(1)(a), (b) and (c) of the DESD Act. The Applicant argues that the General Division failed to consider the documentary evidence that the Applicant had submitted his request for reconsideration to the Respondent within the 30-day limit.

[13] The Applicant also argues that the General Division erred in its interpretation of section 112 of the EI Act and section 1 of the Regulations, in particular by failing to consider the factors related to prejudice and reasonable chances of success on reconsideration. He also argues that the General division did not allow him to present his arguments concerning the *Charter of Rights and Freedoms*.

[14] On review of the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The applicant has raised a question, the answer to which may justify setting aside the decision under review.

CONCLUSION

[15] Leave to appeal is granted.

Pierre Lafontaine

Member, Appeal Division