



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. A. v. Canada Employment Insurance Commission*, 2018 SST 294

Tribunal File Number: AD-18-2

BETWEEN:

K. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 28, 2018

DECISION AND REASONS

DECISION

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

INTRODUCTION

[2] On November 14, 2017, the General Division of the Tribunal determined that the Applicant did not return his claim reports within the allowable period of time in accordance with sections 10 and 50 of the *Employment Insurance Act* and section 26 of the *Employment Insurance Regulations*.

[3] The Applicant requested leave to appeal to the Appeal Division on December 23, 2017, after receiving the General Division decision on November 24, 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] With regard to the application for permission 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 he has grounds of appeal according to paragraphs 58(1)(b) and (c) of the DESD Act. He states that the General Division did not consider his evidence that he was misled by the Respondent when he called in January 2015. He claims that if the agent had advised him to fill out the cards regardless of his pending legal case, he would have complied with the advice. Instead, the agent advised him to contact her again once his circumstances had changed, which he did. He was therefore not ignoring the law but relying on information provided by an agent of the Respondent.

[10] The Applicant also submits that the General Division erred in law when it applied the wrong test and required that he provide special reasons instead of a reasonable explanation for the delay.

[11] After reviewing the appeal docket and the General Division decision, and after considering the Applicant's arguments in support of his request 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 and that 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