



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. G. v. Canada Employment Insurance Commission*, 2018 SST 427

Tribunal File Number: AD-18-219

BETWEEN:

J. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 18, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. G. (Claimant), applied for Employment Insurance benefits and the Respondent, the Canada Employment Insurance Commission (Commission), determined that he was disqualified from receiving benefits because he had lost his employment by reason of his own misconduct. On February 18, 2016, further to the Claimant's request for reconsideration, the Commission maintained its initial decision. The Claimant filed a complete appeal of that decision with the General Division on February 5, 2018.

[3] The General Division concluded that it had no choice but to apply s. 52(2) of the *Department of Employment and Social Development Act* (DESD Act), which states that in no case may an appeal be brought more than one year after a reconsideration decision is communicated to a claimant.

[4] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. He submits that a grievance was filed on December 11, 2015, that the whole process was stressful, and that circumstances beyond his control contributed to the delay in filing his appeal with the General Division.

[5] The Tribunal must decide whether the Claimant's appeal has a reasonable chance of success based on a reviewable error committed by the General Division.

[6] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[7] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

ANALYSIS

[8] Subsection 58(1) of the DESD Act specifies the only grounds of appeal of a General Division decision. These reviewable errors are that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant 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 Claimant does not have to prove his case; rather, he must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

[10] Therefore, 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.

[11] This means that the Tribunal must be in a position to determine, in accordance with s. 58(1) of the DESD Act, whether there is an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the General Division decision under review.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

[12] In his application for leave to appeal, the Claimant states that a grievance was filed on December 11, 2015, following his unlawful termination. Unfortunately, the grievance was not resolved in a timely manner because the employer denied the grievance at the first step of the process. The grievance was then referred to arbitration, which is a very lengthy process. The process was stressful and the Claimant was forced to move several times due to a lack of income. Circumstances beyond his control contributed to the delay in filing his appeal with the General Division.

[13] The evidence before the General Division shows that more than one year passed between when the Commission communicated the reconsideration decision dated February 18, 2016, verbally and in writing to the Claimant and when a complete appeal was filed with the General Division.

[14] The Claimant filed an incomplete appeal with the General Division on June 27, 2017. The application was missing the reconsideration decision and the signature of the Claimant's representative.

[15] On July 6, 2017, the General Division sent the Claimant a letter informing him that his appeal was incomplete because it was missing a copy of the reconsideration decision being appealed and his representative's signature. On July 12, 2017, and August 8, 2017, the Tribunal informed the Claimant by telephone of what was missing in his file to complete his appeal to the General Division.

[16] On February 5, 2018, the Claimant finally completed his appeal by filing a copy of the reconsideration decision dated February 18, 2016, almost two years after it was communicated to him.

[17] 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 claimant.

[18] The Tribunal notes that even if the Claimant had filed a complete appeal with the General Division on June 27, 2017, the appeal would still have been filed more than a year after the reconsideration decision was communicated to him.

[19] Subsection 52(2) of the DESD Act does not give the Tribunal any discretion to extend the time to appeal to the General Division further than one year.

[20] Unfortunately for the Claimant, he has not identified any errors of jurisdiction or law that the General Division may have made, or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision to apply s. 52(2) of the DESD Act.

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

CONCLUSION

[22] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. G., self-represented
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