



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. A. v. Canada Employment Insurance Commission*, 2018 SST 453

Tribunal File Number: AD-18-148

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: April 30, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, K. A. (Claimant), applied for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), determined that he was disqualified from receiving benefits because he had been absent from Canada and had failed to prove his availability for work. On July 27, 2016, further to the Claimant's request for reconsideration, the Commission maintained its initial decision. The Claimant then filed his appeal of that decision with the General Division on November 10, 2017.

[3] The General Division concluded that it had 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 the reconsideration decision is communicated to a claimant.

[4] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. He explains the reasons why he was late in filing his appeal with the General Division, namely, that he was overseas and that he did not have access to his mail.

[5] The Tribunal sent the Claimant a letter requesting that he explain why he was appealing the General Division decision. In his reply, the Claimant admitted that the Commission's decision had been communicated to him by phone on July 6, 2016. He was outside of Canada at that time. He stated that he was confused about the appeal process and that he had wanted to wait for the Commission's written decision before filing his appeal to the General Division.

[6] 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.

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

ISSUE

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

ANALYSIS

[9] 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.

[10] 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; he must instead 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 upon which the appeal might succeed.

[11] Therefore, before leave can be granted, the Tribunal must 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.

[12] 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.

Issue: Does the Claimant’s appeal have a reasonable chance of success based on a reviewable error committed by 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 July 27, 2016, verbally and in writing to the Claimant and when his appeal was filed with the General Division.

[14] The Claimant did not file his appeal with the General Division until November 10, 2017, upon his return to Canada, even though he was familiar with the appeal process, since he had successfully filed a previous appeal to the General Division.

[15] 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. It does not give the Tribunal any discretion to extend the time to appeal to the General Division further than one year.

[16] Unfortunately for the Claimant, he has not identified any errors of jurisdiction or law, 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.

[17] 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	K. A., self-represented
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