



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. D. v. Canada Employment Insurance Commission*, 2018 SST 454

Tribunal File Number: AD-18-152

BETWEEN:

A. D.

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, A. D. (Claimant), established a benefit period effective February 14, 2016. On August 12, 2016, the Respondent, the Canada Employment Insurance Commission (Commission), after approving her claim, disqualified her from receiving benefits because it determined she had voluntarily left her employment without just cause. The Claimant requested reconsideration of this decision on June 21, 2017. After considering the Claimant's explanation for her delay in filing a reconsideration request, the Commission declined to exercise its discretion to extend the 30-day deadline for filing a reconsideration request.

[3] The Claimant appealed the Commission's decision to the General Division of the Social Security Tribunal. The General Division concluded that, although the Commission had not exercised its discretion in a judicial manner in denying the Claimant's request to extend the 30-day period to request reconsideration of a decision, the Claimant had not given a reasonable explanation for the delay and had not demonstrated a continuing intention to request reconsideration.

[4] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division of the Tribunal. She submits that someone did not do their job correctly because the Commission knew that she had quit her job and still approved her claim for benefits. She argues that the employer was mentioned in her application for benefits.

[5] The Tribunal sent a letter to the Claimant requesting that she explain in detail her grounds of appeal. The Claimant did not reply to the Tribunal's request.

[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 *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal for 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 had 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 her case; she 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 a reviewable error based on 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 subsection 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 General Division had to decide whether the Commission exercised its discretion in a judicial manner under section 112 of the *Employment Insurance Act* when it denied the Claimant's request to extend the 30-day reconsideration period. The issue of voluntarily leaving her employment was not before the General Division.

[14] In her testimony before the General Division, the Claimant testified that she received the August 12, 2016, letter shortly after it was issued by the Commission. She found that the decision was unfair and put it aside. She mentioned that she did not give the matter further thought until the Commission took action on her account to recover the overpayment it claimed from her in May or June 2017.

[15] After reviewing the evidence of the Claimant, the General Division determined that the Claimant did not have a reasonable explanation for the delay in requesting the reconsideration and that she had not demonstrated a continuing intention to request the reconsideration.

[16] In her application for leave to appeal, the Claimant did not identify any reviewable errors, such as jurisdiction or a failure by the General Division to observe a principle of natural justice. Nor has she identified errors in law or 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, in coming to the decision.

[17] For the above-mentioned reasons, after reviewing the appeal docket and the General Division decision, and after considering the Claimant's arguments in support of her 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:	A. D., self-represented
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