



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. M. v. Canada Employment Insurance Commission*, 2018 SST 513

Tribunal File Number: AD-17-437

BETWEEN:

S. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: May 9, 2018

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, S. M. (Claimant), established a claim for benefits. After an investigation where the Claimant was met with, a letter dated September 14, 2004, was issued to explain why he was disentitled from Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), found that the Claimant was operating a business and therefore was not considered unemployed. A second letter dated September 14, 2004, was sent to the Claimant. This letter informed the Claimant that a notice of violation had been issued and a penalty imposed because of false representations. A notice of debt was sent to the Claimant on September 18, 2004, regarding the overpayment due and the penalty.

[3] In January 2013, the Claimant filed an appeal to the Board of Referees. The Commission determined that the Claimant had not established special reasons warranting an extension of the appeal period. Consequently, the Claimant's appeal to the Board of Referees was denied.

[4] The Claimant appealed the Commission's decision to the Social Security Tribunal's General Division, which concluded that it was unable to establish that the Commission exercised its discretionary power in a non-judicial manner when it decided that the Claimant's late appeal could not be sent to the Board of Referees.

[5] The Claimant was granted leave to appeal the General Division decision to the Appeal Division. He essentially argues that the General Division did not consider all of the relevant factors when it determined that the Commission acted judicially in refusing his appeal to the Board of Referees.

[6] The Tribunal must decide whether the General Division considered all of the relevant factors when it determined that the Commission acted judicially in refusing the Claimant's appeal to the Board of Referees.

[7] The Tribunal dismisses the Claimant's appeal.

ISSUE

[8] Did the General Division consider all of the relevant factors when it determined that the Commission acted judicially in refusing the Claimant's appeal to the Board of Referees?

ANALYSIS

[9] Subsection 58(1) of the *Department of Employment and Social Development 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 had made in a perverse or capricious manner or without regard for the material before it.

Issue: Did the General Division consider all of the relevant factors when it determined that the Commission acted judicially?

[10] The General Division determined that a previous version of subsection 114(1) of the *Employment Insurance Act*, which applied at the time the Commission issued its decision, allowed a claimant who was the subject of a decision of the Commission to appeal that decision to the Board of Referees within 30 days after the decision was communicated to the claimant or within such further time as the Commission may in any particular case for special reasons allow.

[11] The term "special reasons" was not defined in the legislation. It had been held that the Commission had considerable discretion as to what it could consider special reasons, but this discretion had to be exercised judicially.

[12] In support of his appeal, the Claimant argues that the General Division did not consider all of the relevant factors when it determined that the Commission acted judicially in refusing his appeal to the Board of Referees.

[13] The Claimant states before the Appeal Division that he never received the Commission's decision dated September 14, 2004, but that he did receive a notice of debt shortly after in September or October 2004. He did not pay attention to it at the time since he was going through a financial crisis and marital problems. He put aside the letters he had received before January 2009 because he could not mentally deal with the situation. He had no choice but to file for bankruptcy in January 2009, so he gave all of his statements to his trustee. He did not do anything regarding the notice of debt since he was certain the bankruptcy had released him from all his debts. He filed his appeal to the Board of Referees immediately after he received a letter from the Canada Revenue Agency (CRA) at the end of 2012.

[14] The Claimant's explanation before the Appeal Division for being late in filing his appeal to the Board of Referees is the same one he gave to the Commission in 2013.¹ The Commission determined at that time that the Claimant had not established special reasons warranting an extension of the appeal period.

[15] The Commission, when it then exercised its discretion, considered that the Claimant waited eight years to file his appeal to the Board of Referees. It also considered that he admitted having received a notice of debt but had failed to deal with it between 2004 and 2009 because, as he declared, he was having financial and marital difficulties. He only acted in 2012 when he received a letter from the CRA after his bankruptcy. The Commission determined that these factors did not create a special reason that warranted the extension of the 30-day period for lodging an appeal to the Board of Referees.

[16] Based on this evidence, the General Division found that it was unable to establish that the Commission exercised its discretionary power in a non-judicial manner when it decided that the Claimant's late appeal could not be sent to the Board of Referees. It

¹ Exhibit AD2-27

concluded that the Commission had considered all the relevant elements presented by the Claimant.

[17] The Tribunal finds no reason to intervene. All relevant factors were considered by the Commission when it exercised its discretion to refuse to send the Claimant's late appeal to the Board of Referees.

[18] After reviewing the appeal docket and the General Division decision, and considering the Claimant's arguments, the Tribunal finds that the General Division did not commit any errors when it found that the Commission acted judicially in deciding that the Claimant's late appeal could not be sent to the Board of Referees.

CONCLUSION

[19] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	May 3, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. M., Appellant Caroline Essiminy, Representative for the Appellant Suzanne Prud'Homme, Representative for the Respondent