



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. M. v. Canada Employment Insurance Commission*, 2018 SST 522

Tribunal File Number: AD-18-181

BETWEEN:

L. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Konrad von Finckenstein

DATE OF DECISION: May 10, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant is appealing the General Division's summary dismissal of her appeal, arguing that she was misinformed and that she did not understand the process. The Respondent, the Canada Employment Insurance Commission (Commission), exercised its discretion in her favour by antedating her claim and extending the benefit period to a maximum of 104 weeks. However, her severance pay, allocated on the basis of her normal weekly earnings, extended beyond her benefit period. Accordingly, General Division found that she is not entitled to benefits.

PRELIMINARY MATTER

[3] The appeal was decided on the basis of the written record for the following reasons:

- a) The facts are undisputed and clearly laid out in the General Division decision;
- b) The Appellant did not file any submissions; and
- c) Paragraph 3(1)(a) of the *Social Security Tribunal Regulations* (Regulations) requires that the Tribunal conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

ISSUE

[4] Did the General Division err in summarily dismissing the Appellant's appeal because it had no reasonable chance of success?

ANALYSIS

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) specifies the grounds of appeal of a General Division decision. The only reviewable

errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

[6] The legislation regarding summary dismissals is clear. Subsection 53(1) of the DESDA states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[7] The facts in this case are clear and undisputed. As stated by the General Division:

[1] On September 6, 2017, the Claimant applied for employment insurance regular benefits, two years after a permanent separation on August 31, 2015 from her employer of 31 years. At the time of final separation, the Claimant was in receipt of severance monies totalling \$81,569.14 which was paid to her over two years until August 25, 2017.

[2] The Canada Employment Insurance Commission (Commission) initially advised the Claimant that she did not qualify for benefits because she had zero earnings in the 52 weeks prior to her applying on September 6, 2017. The Claimant requested that the Commission reconsider its decision and further, asked that her claim be antedated to her last day of work on August 30, 2015. The Commission granted the antedate however, it also determined that the severance monies she received were considered earnings that had to be allocated to her benefit period pursuant to section 35 and 36 of the *Employment Insurance Regulations* (Regulations). The Commission also extended the benefit period to the maximum 104 weeks allowable pursuant to subsection 10(10) of the *Employment Insurance Act* (EI Act). Despite the extension, benefits were still not payable to the Claimant because the allocation of the earnings ended on November 5, 2017 beyond the last day of the extended benefit period on September 2, 2017.

[8] The Appellant gives no grounds for her appeal; she merely states in her notice of appeal: “I was misguided and given the wrong information and unaware how the process works. I’m truly upset, in shock and trying to be hopeful at some good news in my appeal.”

[9] The *Employment Insurance Act* (Act) sets out a scheme for temporary income replacement for people who are out of work. The maximum normal period of benefits is 52 weeks, but it can be extended to a maximum of 104 weeks. Although a claim should be filed

as soon as an applicant becomes unemployed, the claim can be antedated if certain preconditions are met.

[10] Here, the Commission exercised all its powers in favour of the Appellant. It antedated the Appellant's claim from Sept 6, 2017, to Sept 6, 2015, and extended the maximum benefit period to 104 weeks, i.e. to September 2, 2017. However, the severance pay she had received from her employer, allocated according to the Appellant's normal weekly earnings of \$713.00, covered the weeks of August 30, 2015, to November 5, 2017. Since her 104-week benefit period ended on September 2, 2017, there is no provision in either the Act or the Regulations under which the Appellant is entitled to benefits or by which the Commission could grant benefits.

[11] Accordingly, the General Division was correct:

- in being satisfied that the appeal had no reasonable chance of success; and
- in summarily dismissing the appeal, as required by s. 53(1) of the DESDA.

CONCLUSION

[12] The appeal is dismissed.

Konrad von Finckenstein
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
PARTIES:	L. M., Appellant Canada Employment Insurance Commission, Respondent