



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. G. v. Canada Employment Insurance Commission*, 2018 SST 573

Tribunal File Number: AD-18-123

BETWEEN:

A. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 25, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] On August 10, 2016, the Respondent, the Canada Employment Insurance Commission (Commission), issued a decision allocating earnings against the prior claim for regular Employment Insurance benefits filed by the Applicant (Claimant). On April 7, 2017, more than 30 days beyond the statutory period to request reconsideration provided for in s. 112(1) of the *Employment Insurance Act* (Act), the Claimant requested that the Commission reconsider its decision. The Commission denied the Claimant's request to extend the 30-day period to make a request for reconsideration. The Applicant appealed to the General Division of the Social Security Tribunal (Tribunal).

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

[4] The Claimant now seeks leave to appeal the General Division decision to the Tribunal's Appeal Division. He essentially submits that the General Division was biased when it overlooked problems that the Claimant encounters as a result of his weight as it made its decision. He argues that it did not fully consider the major setbacks that such weight would cause a person who is trying to take on other life responsibilities that would be considered normal in another context.

[5] The Tribunal sent a letter to the Claimant asking him to explain his allegation of bias and, more particularly, how the conduct of the General Member deviated from the standard. The Claimant did not reply to the Tribunal's request.

[6] The Tribunal must decide whether there is arguably some reviewable error committed by the General Division upon which the appeal might succeed.

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

ISSUE

[8] Does the Claimant address a reviewable error committed by the General Division upon which the appeal might arguably succeed?

ANALYSIS

[9] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal regarding 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 his case, but rather must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, he must establish 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 address a reviewable error committed by the General Division upon which the appeal might arguably succeed?

[13] The Claimant, in his application for leave to appeal, submits that the General Division was biased when it overlooked his weight-related problems as it made its decision. It did not fully consider the major setbacks that such a weight would cause a person who is trying to take on other life responsibilities that would be considered normal in another context.

[14] The General Division had to decide whether the Commission exercised its discretion in a judicial manner under s. 112 of the Act when it denied the Claimant's request to extend the 30-day reconsideration period.

[15] The General Division found that the three factors the Claimant testified about at the hearing (his move, his new job, and his health issues) were all factors that the Commission took into consideration when it exercised its discretion and denied the Claimant's request for an extension of time. The Claimant did not provide any other reasons for the delay, nor did he identify any extenuating or special circumstances.

[16] In the Claimant's testimony at the hearing, the General Division found that additional details that the Claimant provided, namely that his weight-related health issues caused him to be prone to a lack of energy and an inclination to put things aside, were not before the Commission and, therefore, not considered by the Commission.

[17] However, the General Division concluded that the Claimant was able to maintain a full-time job following the issuance of the August 10, 2016, decision. Given that the Claimant's health issues did not prevent him from working full-time, it could not be said that those health issues provide a reasonable explanation for his 210-day delay in requesting a reconsideration of the August 10, 2016, decision letter.

[18] The General Division considered the Claimant's statements during the reconsideration process that he didn't look at his mail, instead letting it pile up, and that it wasn't until it came time to do his personal income taxes that he decided to address this matter before his taxes were charged. The General Division concluded that while trying to avoid having a potential income tax refund applied against his Employment Insurance debt may well have motivated the

Claimant into action in April 2017, it was not evidence of a continuing intention to request a reconsideration of a decision that was already eight months old.

[19] After reviewing the Claimant's evidence, the General Division determined that the Commission had properly exercised its discretion under s. 112 of the Act and the *Reconsideration Regulations* when it determined that the Claimant did not have a reasonable explanation for the delay in making the request for reconsideration and that he did not demonstrate a continuing intention to request the reconsideration.

[20] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as issues of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law, nor has he identified 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 the decision that the Commission acted in a judicial manner when it refused to extend the 30-day period.

[21] Furthermore, there is no evidence submitted by the Claimant that could possibly lead to a conclusion of bias by the General Division member.

[22] For the above-mentioned reasons, following a review of the appeal docket and the General Division decision and upon consideration of 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	A. G., self-represented
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