



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. E. v. Canada Employment Insurance Commission*, 2018 SST 579

Tribunal File Number: AD-18-236

BETWEEN:

**M. E.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Janet Lew

Date of Decision: May 29, 2018

## DECISION AND REASONS

### DECISION

[1] The application for leave to appeal is refused.

### OVERVIEW

[2] The Applicant, M. E., worked at the Ontario Lottery and Gaming Corporation (OLGC) until March 11, 2016. The following day, he applied for Employment Insurance benefits. On April 4, 2016, the Respondent, the Canada Employment Insurance Commission (Commission), denied the Applicant's claim for benefits because it determined that he had voluntarily left his employment without just cause. On January 31, 2017 — more than 30 days after the Commission's decision had been communicated to him — the Applicant asked the Commission to reconsider its decision. However, the *Employment Insurance Act* requires claimants to request reconsiderations within 30 days after the day on which a decision is communicated to them or within any further time that the Commission allows. The Commission found that the Applicant was late in seeking a reconsideration, so it refused to conduct a reconsideration. The Applicant therefore appealed to the General Division.

[3] The General Division examined whether the Commission had been justified in refusing to extend the time within which the Applicant could seek a reconsideration. The General Division found that the Commission had not exercised its discretion judicially. The General Division then considered whether the Applicant had provided a reasonable explanation for requesting more time and had demonstrated a continuing intention to request a reconsideration. Ultimately, the General Division determined that he had not. It refused to extend the time for the Applicant to make a reconsideration request and thereby dismissed the appeal.

[4] The Applicant now seeks leave to appeal the General Division decision on the basis that the Commission had provided him with “misleading information” and that the General Division had both failed to apply the law and failed to give him a full and fair hearing.<sup>1</sup> I must now decide whether any of these arguments raise an arguable case on any of the grounds set out in s. 58(1) of

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<sup>1</sup> See Application to the Appeal Division – Employment Insurance (AD1) and e-mail dated April 24, 2018, from the Applicant (AD1A).

the *Department of Employment and Social Development Act* (DESDA): i.e. does the appeal have a reasonable chance of success?

[5] I am refusing the application for leave to appeal because I find that the appeal does not have a reasonable chance of success. While the Applicant is not required to prove the merits of his case at this stage of the process, the Applicant has failed to adduce any evidence at all that the General Division deprived him of a full and fair hearing, that the General Division erred in law, or that any erroneous advice he might have received was relevant to the issues before the General Division.

### **ISSUES**

[6] Is there an arguable case on a ground of appeal under s. 58(1) of the DESDA that:

- (a) the Commission provided the Applicant with misleading information;
- (b) the General Division erred in law;
- (c) the General Division failed to provide the Applicant with a full and fair hearing and thereby breached any of the principles of natural justice, or otherwise refused to exercise its jurisdiction; or
- (d) the General Division failed to consider the material before it?

### **ANALYSIS**

[7] Subsection 58(1) of the DESDA sets out the grounds of appeal as being limited to the following:

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division 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.

[8] Before I can grant leave, I need to be satisfied that the reasons for appeal fall within the grounds of appeal described in s. 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey*.<sup>2</sup>

**(a) Is there an arguable case that Commission provided the Applicant with misleading information?**

[9] The Applicant argues that the Commission provided him with misleading information before he completed his bi-weekly timesheets. He has not identified the information that he alleges was misleading, but he indicates that the information pertained to completion of bi-weekly timesheets. However, he has not given any explanation as to how any information regarding completion of bi-weekly timesheets was relevant to the issue of his request for a reconsideration or for more time or how it showed any continuing intention to request a reconsideration. On this basis alone, I find that there is no arguable case on this issue.

[10] Even if the misleading information had been relevant, there are no provisions under the *Employment Insurance Act* (Act) or the *Employment Insurance Regulations* (Regulations) that enable me to provide any relief where the Commission might have provided erroneous advice or inaccurate information to a claimant.

[11] The Applicant would still need to demonstrate that there is an arguable case on a ground under s. 58(1) of the DESDA that the General Division erred in law, 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, or failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. However, the Applicant has not made any allegations that tie the General Division to the misleading information. This issue that the Commission provided misleading information falls beyond s. 58(1) of the DESDA. The Applicant therefore has not made out an arguable case.

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<sup>2</sup> *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

**(b) Is there an arguable case that the General Division erred in law?**

[12] The Applicant asserts that the General Division failed to apply the law in his case, although he does not identify any statutes or regulations that he alleges should have been applied. He does claim, however, that he has “conducted numerous investigations and research” and discovered that other individuals with similar issues have succeeded in having their cases overturned. He has not, however, cited any of these cases.

[13] The General Division set out the relevant factual circumstances. From this, it identified the issues before it. First, it determined that the primary issue was whether the Commission had exercised its discretion in a judicial manner and considered all of the relevant factors, while ignoring irrelevant ones, in deciding whether to grant an extension of time to seek a reconsideration. Second, having determined that the Commission had failed to exercise its discretion judicially, the General Division then proceeded to determine whether, based on the facts, it could grant an extension of time. The General Division identified the applicable statutory and regulatory provisions. It then proceeded to apply those provisions to the facts before it. I do not see that it erred in this regard, as the General Division properly identified the issues before it and then applied the relevant statutory and regulatory provisions to the facts.

[14] There was some dispute over the date by which the Commission’s reconsideration decision had been communicated to the Applicant. Nevertheless, the General Division found that, even if it accepted the date proffered by the Applicant, his request for a reconsideration still fell outside the 30-day mark after the Commission’s decision had been communicated to him, so it was a discretionary matter for the Commission to extend the time for him to make a reconsideration request.

[15] Having determined that the Commission had failed to exercise its discretion judicially, the General Division proceeded to determine whether there was any basis by which it could extend the time for seeking a reconsideration. Although the General Division did not refer to the subsection, clearly it was proceeding in this manner under s. 54(1) of the DESDA, which allows it to give the decision that the Commission should have given. I find that, provided that there was a sufficient evidentiary record before it, the General Division was justified in proceeding in this manner.

[16] Section 112 of the *Employment Insurance Act* and the *Reconsideration Request Regulations* are unequivocal to the effect that a claimant who seeks a reconsideration of the Commission's decision may make a request to the Commission for a reconsideration of that decision at any time within 30 days after the day on which the decision is communicated to them, or any further time that the Commission may allow, and the Commission may allow a longer period to make a request for a reconsideration if it is satisfied that there is a reasonable explanation for requesting a longer period and the person has demonstrated a continuing intention to request a reconsideration.

[17] The General Division cited s. 112 of the Act and ss. 1(1) and (2) of the *Reconsideration Request Regulations* and noted the requirements under the Act and the Regulations. It then assessed whether the Applicant had given a reasonable explanation for requesting a longer period within which to seek a reconsideration and whether the Applicant had demonstrated a continuing intention to request a reconsideration. Furthermore, there is no suggestion by the Applicant that the General Division made an erroneous finding of fact in a perverse or capricious manner or without regard for the material before it.

[18] The General Division applied the relevant statutory and regulatory provisions. I am not satisfied that it failed to apply the relevant law, as the Applicant suggests. Accordingly, I find that the appeal does not have a reasonable chance of success on this particular ground.

[19] The Applicant requests that I revisit his case. However, s. 58(1) of the DESDA provides for only limited grounds of appeal; it does not allow for a reassessment of the evidence.<sup>3</sup>

**(c) Is there an arguable case that the General Division failed to observe a principle of natural justice or otherwise refused to exercise its jurisdiction?**

[20] The Applicant contends that the General Division failed to provide him with a full and fair hearing, although he did not express these allegations in greater detail. He does not, for instance, allege that the General Division refused to provide him with the opportunity to adduce bring forward evidence or make any submissions on his own behalf.

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<sup>3</sup> Tracey, *supra*.

[21] The General Division held a teleconference hearing. I have listened to the recording of the hearing, which lasted for approximately 70 minutes. In her introductory remarks, the General Division member informed the Applicant that he would be provided with an opportunity to present his evidence. The member also provided the Applicant with an opportunity to file additional records after the hearing had concluded. Throughout the hearing, the General Division allowed the Applicant to give evidence and make submissions freely. Before concluding the hearing, the member invited the Applicant to give any evidence that he had not already given.

[22] The Applicant has not provided me with any evidence that suggests the General Division deprived him of any opportunity to present his case fully and fairly. In this regard, I find that the appeal does not have a reasonable chance of success.

### **Jurisdictional issues**

[23] During the hearing before the General Division, the Applicant stated that he believed that the appeal would involve each of the three cases in which he was involved; this includes two in connection with his previous employment with Rogers Communications and Sunlife. He explained that he believed that his appeal would cover all three cases and not be restricted to his claim involving the OLGCA because Canada Revenue Agency was pursuing one payment for three overpayments, rather than pursuing three separate payments. He found the process unclear because he was dealing with multiple Employment Insurance files and was dealing with both Canada Revenue Agency and Service Canada.

[24] The Applicant suggests that the General Division should have considered the fact that he had three Employment Insurance claims and that between April 2016 and early 2017, he had been dealing with Canada Revenue Agency. He suggests that the General Division failed to exercise its jurisdiction when it did not address the issue of the overpayments that arose from his employment with Rogers Communications and Sunlife.

[25] The General Division reviewed the Applicant's Notice of Appeal and noted that he had provided a copy of the Commission's letter denying his request for a reconsideration.<sup>4</sup> It appeared to the General Division that the Applicant was cognizant that he was appealing this

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<sup>4</sup> Commission's letter dated February 2, 2017, at GD2-2.

particular decision from the Commission and that the matter before the General Division was restricted to his claim involving his employment with OLG.

[26] However, in his reasons for appeal to the Appeal Division, the Applicant referred to his current monthly plan for repayment, without specifying what the payment concerned. Although the Applicant may have been referring to two other claims in his Notice of Appeal, and although the total overpayment he may owe is in respect of all three claims, that does not thereby confer any jurisdiction on the General Division to address other outstanding claims or appeals which he might have. The General Division — which derives its jurisdiction from ss. 112 and 113 of the *Employment Insurance Act* — was limited, in this case, to examining any issues that arose from the Commission's letter dated February 2, 2017, in which it refused to conduct a reconsideration. Furthermore, as the member noted, nothing in the hearing file signalled to her that the appeal would include any issues the Applicant had regarding his employment with Sunlife and Rogers Communications.

[27] I am not satisfied that the appeal has a reasonable chance of success on the basis that the General Division failed to observe a principle of natural justice or otherwise refused to exercise its jurisdiction.

**(d) Is there an arguable case that the General Division failed to consider the material before it?**

[28] At the same time, the Applicant suggests that the General Division failed to consider the fact that he was dealing with all of his Employment Insurance claims together, albeit with Canada Revenue Agency. He claims that if he did not intend to seek a reconsideration, he would not have continued to communicate with Canada Revenue Agency regarding his claim to benefits arising from his employment with OLG. He states that he only became aware of the requirement to request a reconsideration when Canada Revenue Agency instructed him to do so. He suggests that the General Division should have considered this background information when it assessed whether he had a continuing intention to seek a reconsideration.

[29] I do not see any basis to these arguments that the General Division failed to consider the material before it, because clearly the General Division considered these points at paragraphs 36



and 44. At paragraph 36, the General Division noted the Applicant's explanation for his delay, that there was "confusion about other appeals he said he made, and his dealings with CRA on his overpayments." Even so, the General Division member advised the Applicant during the hearing that she was prepared to consider any evidence that the Applicant could produce regarding other appeals he had, including any requests for reconsideration or appeal,<sup>5</sup> particularly if it could assist the Applicant in demonstrating that he had a continuing intention to request a reconsideration. However, the Applicant did not file any additional records to support his claim that he had had a continuing intention throughout.

[30] I am not satisfied that the appeal has a reasonable chance of success on the basis that the General Division failed to consider the evidence or submissions regarding the Applicant's claims involving Rogers Communications and Sunlife.

**CONCLUSION**

[31] In light of the aforementioned reasons, the application for leave to appeal is refused.

Janet Lew  
Member, Appeal Division

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| REPRESENTATIVE: | M. E., self-represented |
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<sup>5</sup> See approximately 53 minute mark of recording of hearing before General Division.