



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. D. v. Canada Employment Insurance Commission*, 2018 SST 625

Tribunal File Number: AD-18-351

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: June 8, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. D. (Claimant), made an initial claim for Employment Insurance sickness benefits. Following an antedate request, a benefit period was established for June 19, 2016, and the Claimant received sickness benefits for 15 weeks.

[3] On May 9, 2017, the Respondent, the Canada Employment Insurance Commission (Commission), agreed to convert the Claimant's sickness benefits into regular benefits. The Claimant also asked for his subsequent claims for benefits to be antedated from November 6, 2016, to May 8, 2017. The Commission refused the Claimant's antedate request because he had not demonstrated good cause for the delay.

[4] The Claimant requested a reconsideration of this decision, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[5] The Claimant now seeks leave from the Tribunal to appeal the General Division decision.

[6] In support of his application for leave to appeal, the Claimant argued that the General Division made an important factual error that erroneously influenced its decision. He also maintains that the General Division erred in law in its application of the Federal Court of Appeal's decision in *Attorney General of Canada v. Albrecht* (A-172-85) and that it failed to observe a principle of natural justice because it did not render a decision in accordance with the evidence that was before it.

[7] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[8] The Tribunal grants leave to appeal because the Claimant has raised at least one ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

[9] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

ANALYSIS

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

[11] 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 application for leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

[12] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal raised by the Claimant has a reasonable chance of success.

[13] This means that the Tribunal must be in a position to determine, in accordance with s. 58(1) of the DESDA, whether there is an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the 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?

[14] In support of his application for leave to appeal, the Claimant argued that the General Division made an important factual error that erroneously influenced its decision. He maintains that the General Division disregarded evidence that he was distraught about the situation and contacted numerous people who guided him and sometimes even acted on his behalf with various organizations. The General Division does not mention these important clarifications when it uses the events to reject the Claimant's medical evidence.

[15] The Claimant maintains that the General Division erred in law in its application of the Federal Court of Appeal decision in *Attorney General of Canada v. Albrecht* (A-172-85). He also argues that the General Division failed to observe a principle of natural justice because it did not render a decision in accordance with the evidence that was before it.

[16] After reviewing the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Claimant has raised an issue that may lead to the setting aside of the decision under review.

CONCLUSION

[17] The Tribunal grants leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	Frédéric Forget, Representative for the Applicant
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