



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. S. v. Canada Employment Insurance Commission*, 2018 SST 669

Tribunal File Number: AD-18-343

BETWEEN:

C. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Janet Lew

Date of Decision: June 15, 2018

DECISION AND REASONS

DECISION

[1] An extension of time to apply for leave to appeal is refused.

OVERVIEW

[2] The Applicant, C. S., worked as a medical office administrator in a medical office until February 16, 2017. She quit that employment because she had been offered employment with another company. However, after she quit, she realized that, after taking transportation expenses into account, her net income with the new employer would be less than she earned previously. Ultimately, she declined the new job opportunity altogether and instead returned to school in September 2017. She was unable to return to her former position because it was no longer available. The Applicant applied for Employment Insurance benefits on financial grounds. She sought temporary benefits until she was able to find another position to support her family. She received Employment Insurance benefits in the amount of \$607 for the period from February 24, 2017 to March 4, 2017, while her claim was under review.

[3] The Respondent, the Canada Employment Insurance Commission, ultimately denied the Applicant's application for Employment Insurance benefits, initially and upon reconsideration. In its reconsideration decision, the Respondent explained that it found that the Applicant had not shown just cause for leaving her employment. The Applicant appealed the Respondent's reconsideration decision to the General Division. The General Division dismissed the appeal, having found that the Applicant had not shown just cause for voluntarily leaving her employment. The General Division determined that the Applicant was therefore disqualified from any Employment Insurance benefits from February 19, 2017, onward, and that she was to pay the overpayment of benefits in the amount of \$607.

[4] The Social Security Tribunal of Canada informed the parties by mail that if they wished to appeal the General Division's decision, they had to seek leave to appeal within 30 days after the General Division's decision had been communicated to them. The Applicant filed an application requesting leave to appeal on May 25, 2018. She indicated that she had received the General Division's decision on February 19, 2018. She explained that she was late in filing an

application requesting leave to appeal because she was unaware that she could appeal the General Division's decision. She is appealing the decision on the ground that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction when it failed to consider her personal circumstances.

[5] I must decide whether the Applicant's application requesting leave to appeal was filed on time and, if not, whether I should exercise my discretion and extend the time for the leave to appeal application to be filed. If I should extend the time for the leave to application to be filed, I must then decide whether the appeal has a reasonable chance of success, i.e. whether there is an arguable ground.

[6] I am refusing the request to extend the time for the leave to appeal application to be filed because the Applicant has not shown that there is an arguable case and because I have not otherwise readily identified any errors on the record.

ISSUES

[7] The issues before me are as follows:

- (a) Did the Applicant file her application requesting leave to appeal on time?
- (b) If the application requesting leave to appeal was filed late, should I exercise my discretion and extend the time for the application requesting leave to appeal to be filed?
- (c) If I extend the time for the application for leave to appeal to be filed, does the appeal have a reasonable chance of success?

ANALYSIS

[8] Subsection 58(1) of the *Department of Employment and Social Development Act* (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.

[9] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the grounds of appeal set out under s. 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey*.¹

Issue 1: Did the Applicant file her application requesting leave to appeal on time?

[10] No. I find that the Applicant failed to file an application requesting leave to appeal on time.

[11] Under paragraph 57(1)(a) of the DESDA, an application for leave to appeal — in the case of a decision made by the Employment Insurance section — must be made to the Appeal Division within 30 days after the day on which it was communicated to the Applicant.

[12] The Applicant states that the General Division's decision had been communicated to her on February 19, 2018. I note, however, that the covering letter under which the decision had been sent is also dated February 19, 2018. It is unlikely that the Applicant would have received the decision on this date and, as a result, it would be appropriate to apply the deeming provisions under s. 19 of the *Social Security Tribunal Regulations* and deem the General Division's decision to have been communicated to the Applicant ten days after the day on which it was mailed to her: on March 1, 2018.

[13] Under paragraph 57(1)(a) of the DESDA, even if the General Division's decision had been communicated to the Applicant on March 1, 2018, she would have been required to file an application requesting leave to appeal by no later than March 31, 2018. However, the Applicant did not file an application requesting leave to appeal until May 25, 2018. Clearly, she was late in

¹ *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

filing an application requesting leave to appeal, irrespective of whether the General Division's decision had been communicated to her on February 19, 2018, or on March 1, 2018.

Issue 2: If the application requesting leave to appeal was filed late, should I exercise my discretion and extend the time for filing the application requesting leave to appeal?

[14] No. I find that, on the facts before me, there is no basis to warrant exercising my discretion.

[15] Subsection 57(2) of the DESDA provides that I may allow further time within which an application for leave to appeal may be made, but in no case may an application be made more than one year after the day on which the decision was communicated to an appellant.

[16] In deciding whether to grant an extension of time to file an application for leave to appeal, the overriding consideration is the interests of justice.² In both *X (Re)* and *Canada (Attorney General) v. Larkman*, the Federal Court of Appeal identified the relevant factors for consideration:

- (a) whether there is an arguable case on appeal or some potential merit to the application;
- (b) whether there are special circumstances or a reasonable explanation for the delay;
- (c) whether the delay is excessive; and
- (d) whether the respondent will be prejudiced if the extension is granted.

[17] In *Larkman*, the Federal Court of Appeal also examined whether the party had a continuing intention to pursue the application.

[18] Although the delay involved here is relatively short and the Respondent is unlikely to face any prejudice if an extension were to be granted, the fact that the Applicant was unaware of her appeal rights does not reasonably explain the delay, particularly because the Tribunal had set out her appeal rights and the timeframe within which she could file an appeal.

² *X (Re)*, 2014 FCA 249; *Canada (Attorney General) v. Larkman*, 2012 FCA 204.

[19] The fact that the Applicant has not provided a reasonable explanation for the delay would not, on its own, serve as a bar to an extension. In my view, in determining whether it is in the interests of justice to extend the time for filing, greater weight should be given to whether there is an arguable case, in the absence of any other special circumstances.

[20] The Applicant argues that the General Division failed to observe a principle of natural justice because it based its decision “on the labor [*sic*] law” rather than her personal circumstances, including her financial struggles and the need for temporary financial support. She is attending school, has two children to support, and is struggling with financial debt. She submits that the employment insurance scheme should provide assistance to those on low incomes to ensure that they have a reasonable standard of living. This does not relate to any principles of natural justice.

[21] Natural justice is concerned with ensuring that an applicant has a fair opportunity to present their case and that proceedings are fair and free of any bias. It relates to issues of procedural fairness before the General Division, rather than the impact of its decisions on an applicant. The Applicant’s allegations do not address any issues of procedural fairness or natural justice as they relate to the General Division. The Applicant has not pointed to or provided any details to suggest that the General Division might have deprived her of an opportunity to fully and fairly present her case or might have exhibited any bias against her.

[22] Although the Applicant suggests that the General Division should have considered her personal circumstances, there are no provisions under the *Employment Insurance Act* (Act) that allowed it to give an equitable remedy to the Applicant to alleviate her personal and financial circumstances. The General Division was bound to apply the provisions of the Act when it assessed whether the Applicant had just cause for leaving her employment.

[23] I find that the Applicant has not raised an arguable case and I do not readily see any errors on the record that the General Division may have made.

[24] Finally, the Applicant has not raised any other extenuating factors—apart perhaps from her personal and financial circumstances—to show that it would be in the interests of justice to extend the time to file an appeal. The lack of an arguable case is too overriding a consideration to

overlook, notwithstanding her personal and financial circumstances. I see no basis to warrant exercising my discretion to extend the time for filing the application requesting leave to appeal.

Issue 3: If I extend the time for filing the application requesting leave to appeal, does the appeal have a reasonable chance of success?

[25] I have addressed this issue in the preceding section. Even if I had granted an extension of time, for the reasons set out above, I would have found that the appeal does not have a reasonable chance of success and, on that basis, would have refused the application requesting leave to appeal.

CONCLUSION

[26] An extension of time to apply for leave to appeal is refused.

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	C. S., self-represented
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