



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. B. v. Canada Employment Insurance Commission*, 2018 SST 675

Tribunal File Number: AD-18-298

BETWEEN:

**B. B.**

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: June 14, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, B. B., worked as a correctional officer) from August 27, 2015 until January 2, 2016, when he was released from his employment. The Applicant applied for Employment Insurance benefits in May 2017 immediately after receiving a record of employment from his employer and learning of the reason for the separation.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), denied the application for Employment Insurance benefits, having determined that the Applicant did not have sufficient hours of insurable employment between May 22, 2016 and May 20, 2017. The Applicant then requested that his claim be antedated to January 5, 2016, because this would then provide him with sufficient insurable hours of employment to qualify for Employment Insurance benefits. The Respondent denied his request for an antedate, finding that the Applicant did not have good cause to apply late. The Applicant sought a reconsideration, but the Respondent maintained its position against antedating the claim.

[4] The Applicant appealed the Commission's reconsideration decision to the General Division of the Social Security Tribunal, but it dismissed the appeal, having found that the Applicant had not demonstrated that he had good cause for the delay in making a claim for Employment Insurance benefits. The Applicant now seeks leave to appeal the General Division's decision on the grounds that the General Division failed to observe a principle of natural justice and that 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. I must decide whether the appeal has a reasonable chance of success, i.e. whether there is an arguable case.

[5] I am not satisfied that the appeal has a reasonable chance of success because the Applicant has not identified where the General Division might have failed to observe a principle

of natural justice, erred in law, or based its decision on an erroneous finding of fact without regard to the material before it.

## ISSUES

- [6] The Applicant has identified two issues that he argues raise an arguable case:
- (a) is there an arguable case that the General Division failed to observe a principle of natural justice?
  - (b) is there an arguable case that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it when it found that the Applicant did not have good cause for the delay in applying for Employment Insurance benefits?

## ANALYSIS

[7] 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.

[8] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal 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 v. Canada (Attorney General)*.<sup>1</sup> The Applicant has identified two issues for me to consider.

**Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice?**

[9] The Applicant alleges that the General Division failed to observe a principle of natural justice. Natural justice is concerned with ensuring that an applicant has a fair opportunity to present his or her case and that the proceedings are fair and free of any bias. It relates to issues of procedural fairness before the General Division, rather than the impact of the General Division's decisions on an applicant. The Applicant's allegations do not address any issues of procedural fairness or of natural justice as they relate to the General Division. The Applicant has not pointed to or provided any evidence — nor do I see any evidence — to suggest that the General Division might have deprived him of an opportunity to fully and fairly present his case or that it exhibited any bias against him. As a result, I am not satisfied that the appeal has a reasonable chance of success on this ground.

**Issue 2: Is there an arguable case that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it when it found that the Applicant did not have good cause for the delay in applying for Employment Insurance benefits?**

[10] The Applicant submits also that 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 when it found that he did not demonstrate good cause for the delay in making a claim for Employment Insurance benefits between January 3, 2016 and May 23, 2017. The Applicant did not otherwise identify any other alleged erroneous findings of fact.

[11] The Applicant suggests that the General Division erred by “fixat[ing] on the assumption that [he] was an unreasonable person.” He argues that he demonstrated “good & reasonable cause for the delay” when he tried to obtain a record of employment from his employer to determine the reason for the termination of his employment.

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<sup>1</sup> *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[12] In his appeal before the General Division, the Applicant explained that he was late in applying for Employment Insurance benefits because he had to wait for more than a year before his employer provided him with a record of employment. He also noted that he had been unaware that he could have filed his application for Employment Insurance benefits without the record of employment.

[13] The General Division examined the Applicant's explanation for his delay. It acknowledged the Applicant's evidence that he was waiting to receive a record of employment from his employer. It also acknowledged that the Applicant waited a considerable time before his employer provided a record of employment, despite his efforts to obtain one. Given that the General Division accurately referred to this evidence in its analysis, it cannot be said that an appeal would have a reasonable chance of success on the ground that 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.

[14] If anything, the Applicant is suggesting that the General Division erred in assuming that he had acted unreasonably, without truly assessing the reasonableness of his delay. He argues that he acted reasonably because he had contacted "Employment Insurance"<sup>2</sup> and had been advised that he would need to provide a reason for the termination of his employment. He also notes that he made concerted efforts to obtain a record of employment from his employer.

[15] The General Division considered these explanations. Essentially, the Applicant is seeking a reassessment of the issue of whether he acted reasonably when he delayed applying for Employment Insurance benefits. 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>

[16] The General Division cited the Federal Court of Appeal's decisions in *Canada (Attorney General) v. Trinh*<sup>4</sup> and *Canada (Attorney General) v. Beaudin*<sup>5</sup> in its assessment of the reasonableness of the Applicant's actions. These decisions set out the test under s. 10(4) of the

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<sup>2</sup> In his Notice of Appeal, the Applicant stated that he had received advice from the "HR Justice Department," GD2-1 and GD2A-4.

<sup>3</sup> *Tracey*, *supra* note 1.

<sup>4</sup> *Canada (Attorney General) v. Trinh*, 2010 FCA 335.

<sup>5</sup> *Canada (Attorney General) v. Beaudin*, 2005 FCA 123.

*Employment Insurance Act* (Act) that an applicant is expected to take reasonable, prompt steps to understand their obligations under the Act. The General Division stipulated that the Applicant would have to demonstrate that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act. It identified the appropriate legal test to apply when assessing whether there was good cause.

[17] The Applicant's submissions suggest that the General Division erred when it applied settled principles to the facts. This constitutes a question of mixed act and law. It is not an error of law. This situation is similar to the one before the Federal Court of Appeal in *Quadir v. Canada (Attorney General)*,<sup>6</sup> where it dealt with the same issue and determined that the Appeal Division did not have jurisdiction to act in matters involving questions of mixed fact and law. Under s. 58(1) of the DESDA, I do not have any jurisdiction to interfere with the General Division's decision regarding the reasonableness of the Applicant's actions. Accordingly, I am not satisfied that the appeal has a reasonable chance of success.

## CONCLUSION

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

Janet Lew  
Member, Appeal Division

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| REPRESENTATIVE: | Eleanor Wallace, for the Applicant |
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<sup>6</sup> *Quadir v. Canada (Attorney General)*, 2018 FCA 21.