



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. M. v. Canada Employment Insurance Commission*, 2018 SST 676

Tribunal File Number: AD-18-268

BETWEEN:

A. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: June 14, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. M. (Claimant), applied for and was granted Employment Insurance benefits effective November 2011. The Claimant submitted weekly reports for the purpose of claiming benefits but then stopped submitting his reports between December 2011 and July 2012. In July 2012, the Claimant submitted a subsequent claim report and requested that this subsequent claim be antedated to June 3, 2012. This request was approved by the Respondent, the Canada Employment Insurance Commission (Commission). In June 2017, the Claimant requested another antedate of his subsequent claim to January 15, 2012. The Commission concluded that the Claimant's reasons for the delay did not constitute good cause pursuant to s. 10(5) of the *Employment Insurance Act* (Act), and this decision was maintained following a reconsideration request. The Claimant appealed to the General Division of the Tribunal.

[3] The General Division found that the Claimant failed to meet the onus placed upon him to demonstrate good cause for the entire period of the delay in submitting his reports. As a result, his claim could not be antedated to January 15, 2012, pursuant to s. 10(5) of the Act.

[4] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. In his application for leave to appeal, the Claimant essentially repeats his version of events that he had submitted to the General Division. He states that when he spoke to the Commission in July 2012, he requested that his claim be antedated to January 2012 and not June 2012.

[5] The Tribunal proceeded to send a letter to the Claimant requesting that he explain in detail why he was appealing the General Division decision. He was then informed that it was not sufficient to simply repeat his testimony that he had given before the General Division. The Claimant did not reply to the Tribunal within the allowed period of time.

[6] The Tribunal must decide whether there is an arguable case that the General Division committed a reviewable error that might form the basis of a successful appeal.

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

ISSUE

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

ANALYSIS

[9] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of 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; he must instead establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, the Claimant must show 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's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

[13] In his application for leave to appeal, the Claimant essentially repeats his version of events that he submitted to the General Division. He states that when he spoke to the Commission in July 2012, he requested that his claim be antedated to January 2012 and not June 2012.

[14] The Claimant puts forward that his claim needs to be adjusted in accordance with his unemployment periods because he made several attempts and spent several hours on the phone to restart his claim without success. The Claimant argues that his reports need to be manually adjusted for those weeks, as advised by the Commission representative, in order to fix the overpayment on his account.

[15] The General Division found that if the Commission had made an error, the Claimant was well aware of that error. It determined that a reasonable, prudent person, in similar circumstances, would have taken steps to satisfy him or herself as to his or her rights and obligations under the Act. If a prudent and reasonable person had requested an antedate to January 15, 2012, and then realized that he or she was getting paid benefits for the period starting in June 2012, that person would have contacted the Commission in 2012 to rectify that error. A reasonable and prudent person would not have waited until June 10, 2017, to claim that an error occurred in the processing of his or her antedate request that was filed in July 2012.

[16] The General Division concluded that the Claimant was pursuing the antedate to seek a remedy to his overpayment dispute with the Commission and that it was not a demonstration of good cause for delaying making his claim.

[17] Unfortunately for the Claimant, an appeal to the Appeal Division of the Tribunal is not a new hearing, where a party can re-present its evidence and hope for a new, favourable outcome.

[18] In his application for leave to appeal, although specifically requested to do so, 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 identified neither errors in

law nor 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 its decision.

[19] For the above-mentioned reasons and after reviewing both the appeal docket and the General Division decision and considering 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	A. M., self-represented
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