



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *K. T. v. Canada Employment Insurance Commission*, 2018 SST 725

Tribunal File Number: AD-18-323

BETWEEN:

**K. T.**

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: Stephen Bergen

Date of Decision: July 11, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, K. T. (Claimant), was laid off from her employment on November 18, 2016, although she was recalled sporadically in the period from December 2016 to March 2017. She did not file an application for Employment Insurance benefits until May 17, 2017, but when she did, she requested that her application be antedated to November 20, 2016. The Respondent, the Canada Employment Insurance Commission (Commission), refused the Claimant's antedate request because it found that she had not proven that she had good cause for the delay in applying for benefits. The Commission established a benefit period effective May 14, 2017, with the result that the Claimant was entitled to fewer weeks of benefits than she might have had if the application had been antedated. The Claimant requested a reconsideration, but the Commission maintained its original decision. The Claimant appealed to the General Division of the Social Security Tribunal. Her appeal was dismissed and she is now seeking leave to appeal to the Appeal Division.

[3] The Claimant does not have a reasonable chance of success on appeal. She asserted that the General Division had failed to observe a principle of natural justice, but she has not identified any principle of natural justice that was offended. She has not made out an arguable case.

### **ISSUE**

[4] Is there an arguable case that the General Division failed to observe a principle of natural justice?

### **ANALYSIS**

#### **General principles**

[5] The Claimant is appealing a decision of the General Division to the Appeal Division. The two levels of appeal are quite different. The General Division is empowered to consider and

weigh the evidence before it and to make findings of fact. The General Division then applies the law to these facts to reach conclusions on the substantive issues raised by the appeal.

[6] However, the Appeal Division's task is more restricted than that of the General Division. The Appeal Division cannot intervene in a General Division decision unless it can find that the General Division has made one of the types of errors described by the "grounds of appeal" in s. 58(1) of the *Department of Employment and Social Development Act* (DESD Act), which are set out below:

- 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.

[7] Unless the General Division erred in one of these ways, the appeal cannot succeed, even if the Appeal Division disagrees with the General Division's conclusions or the result.

[8] To grant leave and allow the appeal to go forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. A reasonable chance of success has been equated to an arguable case.<sup>1</sup>

### **Natural justice**

[9] The Claimant has asserted that the General Division failed to observe a principle of natural justice. This is one of the grounds of appeal described in s. 58(1) of the DESD Act.

[10] "Natural justice" refers to fairness of process and includes such procedural protections as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against them. The Claimant did not explain in what way the General Division failed to observe a principle of natural justice, and there is no error related to natural justice that is apparent on the

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<sup>1</sup> *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Ingram v. Canada (Attorney General)*, 2017 FC 259

face of the file. On May 25, 2018, I requested that the Claimant clarify the reason for her appeal. I received no response to my letter.

[11] I find that the Claimant has not made out an arguable case that the General Division failed to observe a principle of natural justice.

**Factual error**

[12] The General Division dismissed the Claimant's appeal because it concluded that the Claimant did not have a reasonable explanation for the entire period of the delay. Once the Claimant understood that she would not be recalled to work, she stated that she was waiting for her Record of Employment (ROE) and that she then received conflicting information from friends and family as to her ability to apply. The General Division found that it was not reasonable or prudent for the Claimant to have failed to contact someone in authority in order to determine the correct procedure for another four months after she knew the ROE had been filed.

[13] The Claimant has not suggested that the General Division misunderstood or ignored any of the evidence on which it relied to reach its conclusion. Nonetheless, in accordance with the direction of decisions such as *Karadeolian*,<sup>2</sup> I have reviewed the record to determine whether any evidence was ignored or overlooked that might have supported an arguable case that the General Division erred. I did not find any basis for an arguable case.

[14] There is no reasonable chance of success on appeal.

**CONCLUSION**

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

Stephen Bergen  
Member, Appeal Division

REPRESENTATIVE:	K. T., self-represented
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<sup>2</sup> *Karadeolian v. Canada (Attorney General)*, 2016 FC 615