



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. Z. v. Canada Employment Insurance Commission*, 2018 SST 719

Tribunal File Number: AD-18-376

BETWEEN:

**M. Z.**

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: Shu-Tai Cheng

Date of Decision: July 9, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, M. Z., applied for Employment Insurance (EI) benefits, specifically Compassionate Care Benefits (CCB), in September 2017. The Respondent, the Canada Employment Insurance Commission, determined that he did not have enough insurable hours of employment to qualify for EI benefits.

[3] On reconsideration, the Respondent found that the Applicant would have enough hours to qualify for benefits if his claim was antedated to April 2016. However, it refused the Applicant's antedate request; this is the only issue in the current appeal.

[4] The Applicant appealed to the General Division of the Social Security Tribunal of Canada. The General Division found that the Applicant had good cause for delay from April 2016, to October 25, 2016, while he was abroad taking care of his seriously ill mother. However, it also found that he did not have just cause for delay from October 2016 to August 2017.

[5] The Applicant filed the Application with the Appeal Division and submitted that the General Division did not properly evaluate his case. His main argument is that the General Division erred in law by failing to consider that his employer did not meet its obligations to provide him with a Record of Employment (ROE) in a timely manner and to advise him of CCB benefits.

[6] I find that the appeal does not have a reasonable chance of success because the Application simply repeats arguments made at the General Division and does not disclose any reviewable errors.

## ISSUE

[7] **Issue 1: Is there an argument that the General Division erred in law by failing to consider the employer's responsibilities?**

## ANALYSIS

[8] An applicant must seek leave to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave is granted.<sup>1</sup>

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?<sup>2</sup>

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error.<sup>4</sup> The only reviewable errors are the following: 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] The Applicant submits that the General Division did not consider his arguments that the employer failed to meet its obligations to provide an ROE within five days of interruption of earnings (in April 2016) and to advise him that CCB benefits existed.

**Issue 1: Is there an argument that the General Division erred in law by failing to consider the employer's responsibilities?**

[12] The General Division did not err in law in making its decision.

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<sup>1</sup> *Department of Employment and Social Development Act* (DESD Act) at ss. 56(1) and 58(3).

<sup>2</sup> *Osaj v. Canada (Attorney General)*, 2016 FC 115, at para. 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208, at para. 36; *Glover v. Canada (Attorney General)*, 2017 FC 363, at para. 22.

<sup>3</sup> DESD Act at s. 58(2).

<sup>4</sup> DESD Act at s. 58(1).

[13] This appeal turns on whether the Applicant had good cause for delay in applying for the entire period of the delay in making his claim.<sup>5</sup> The onus to prove good cause is on the Applicant.<sup>6</sup> The question to ask when assessing good cause is whether the Applicant acted as a reasonable person in the same situation would have done in order to satisfy himself of both his rights and his obligations under the *Employment Insurance Act* (EI Act).<sup>7</sup>

[14] The General Division correctly stated the relevant legislative provisions, the binding jurisprudence, and the applicable legal tests.<sup>8</sup>

[15] The General Division determined that the Applicant did not take any steps to inquire about any benefits that might be available from October 2016 to August 2017. The General Division accepted the Applicant's evidence that he did not take any steps because:

- a) he was unaware of the possibility of applying for EI benefits to cover the period he was not in employment while caring for his mother;<sup>9</sup> and
- b) his employer did not issue an ROE while he was away from his job and did not tell him about CCB.<sup>10</sup>

[16] Nevertheless, the General Division concluded that a reasonable person “would have taken some steps, at least upon their return to Canada, to determine if they were eligible for any type of government assistance for the period they had been without earnings. While the Appellant may not have been aware of CCB, he was not prevented from communicating with the Respondent to determine if he had any rights to benefits of any kind under the Act ....”<sup>11</sup>

[17] The General Division correctly applied the legal tests established in binding Federal Court of Appeal jurisprudence.

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<sup>5</sup> *Canada (Attorney General) v. Kaler*, 2011 FCA 266.

<sup>6</sup> *Canada (Attorney General) v. Chalk*, 2010 FCA 243; *Canada (Attorney General) v. Trinh*, 2010 FCA 335.

<sup>7</sup> *Kaler*, *supra* note 5; *Canada (Attorney General) v. Beaudin*, 2005 FCA 123.

<sup>8</sup> General Division decision, at paras. 4, 5, 7, 8, 12, 13, and 16.

<sup>9</sup> *Ibid.* at paras. 15–16.

<sup>10</sup> *Ibid.* at para. 17.

<sup>11</sup> *Ibid.* at para. 18.

[18] The Applicant argues that his situation should have been reviewed in the context of his employer having failed to meet its responsibilities. For the most part, the Application repeats the Applicant's evidence and submissions before the General Division.

[19] The General Division considered the Applicant's arguments and the evidence on file. It considered his testimony and each of the reasons he advanced to explain his delay in applying for EI benefits. The General Division's decision includes an analysis of each of the Applicant's arguments, including the alleged failure of the employer to meet its responsibilities. The General Division did not err in law by failing to consider the Applicant's relevant arguments.

[20] A simple repetition of the Applicant's arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[21] The Applicant also submits that the General Division did not consider that his inexperience with the EI system and his reliance on his employer are sufficient to constitute good cause, according to case law.

[22] This is not a reason for appeal that has a reasonable chance of success either. The binding jurisprudence is consistent: the correct legal test is whether the Applicant acted as a reasonable person in the same situation would have done in order to satisfy himself of both his rights and his obligations under the EI Act.

[23] The General Division applied the correct legal test to the facts. It did not commit a reviewable error in so doing.

[24] I have read and considered the General Division decision and the documentary record. I find that the General Division did not overlook or misconstrue any important evidence. There is no suggestion that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, or that it erred in law in coming to its decision.

[25] I am satisfied that the appeal has no reasonable chance of success.

**CONCLUSION**

[26] The Application is refused.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVE:	M. Z., Applicant, self-represented
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