



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *C. M. v. Canada Employment Insurance Commission*, 2018 SST 736

Tribunal File Number: AD-18-293

BETWEEN:

**C. M.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

---

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 16, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] C. M. (Claimant) worked for X for nearly 30 years. In August 22, 2006, she was diagnosed with Parkinson's disease. On August 31, 2012, she retired because of her illness. On April 26, 2017, she submitted a claim antedated to September 2, 2012, for Employment Insurance sickness benefits. The Canada Employment Insurance Commission (Commission) refused to antedate the claim for benefits because the Claimant had not established that she had good cause between September 2, 2012, and April 22, 2017, to justify her delay. The Claimant requested a reconsideration of this decision, but the Commission maintained its original decision. The Claimant appealed this decision to the General Division of the Tribunal.

[3] The General Division found that a reasonable and prudent person in the Claimant's situation would have contacted the Commission promptly to find out their rights. It underscored that the Claimant was able to enquire of the Régie des rentes du Québec about her rights. The General Division found that the Claimant did not have good cause for the delay between September 2, 2012, and April 26, 2017.

[4] The Claimant now seeks leave from the Tribunal to appeal the General Division's decision.

[5] In support of her application for leave to appeal, the Claimant argues that the Commission should be flexible when processing antedate requests for sickness benefits. She stresses that she disagrees with the General Division's decision and asks that she be shown that she is not alone in this and that the Commission show support and empathy.

[6] On June 13, 2018, the Tribunal asked the Claimant in writing to provide her detailed grounds of appeal in support of the application for leave to appeal under s. 58(1) of the *Department of Employment and Social Development Act* (DESDA).

[7] In her response to the Tribunal, the Claimant did not raise any ground of appeal from s. 58(1) of the DESDA.

[8] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal might have a reasonable chance of success.

[9] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal upon which the appeal might succeed.

#### **ISSUE**

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

#### **ANALYSIS**

[11] Subsection 58(1) of the DESDA specifies the only grounds of appeal for 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 made in a perverse or capricious manner or without regard for the material before it.

[12] 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 her case; she must instead establish that the appeal has a reasonable chance of success. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

[13] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal raised by the Claimant has a reasonable chance of success.

[14] This means that the Tribunal must be in a position to determine, in accordance with s. 58(1) of the DESDA, whether there is an issue of natural justice, jurisdiction, law, or fact that may justify setting aside the decision under review.

**Issue: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error made by the General Division?**

[15] In support of her application for leave to appeal, the Claimant argues that the Commission should be flexible when processing requests to antedate sickness benefit claims. She asks that she be shown that she is not alone in this and that the Commission show support and empathy.

[16] The General Division found that a reasonable and prudent person in the Claimant's situation would have contacted the Commission promptly to find out her rights instead of waiting more than five years.

[17] As the General Division noted, the medical evidence submitted by the Claimant does not show that, because of her illness, she was incapable of applying for Employment Insurance benefits each day between September 2, 2012, and April 26, 2017. Furthermore, the Claimant was able to enquire of the Régie des rentes du Québec to find out her rights.

[18] The General Division found that the Claimant did not have good cause between September 2, 2012, and April 26, 2017, for her delay, and that the antedate request should therefore be refused.

[19] The Tribunal is sympathetic to the Claimant's medical situation. However, the Tribunal finds that, despite the Tribunal's specific request, the Claimant has not raised any issues of law, fact or jurisdiction that might lead to the setting aside of the decision under review.

[20] On review of the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no choice but to find that the appeal has no reasonable chance of success.

### **CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	C. M., self-represented
-----------------	-------------------------