



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *W. S. v. Canada Employment Insurance Commission*, 2018 SST 823

Tribunal File Number: AD-18-491

BETWEEN:

**W. S.**

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: Pierre Lafontaine

Date of Decision: August 17, 2018

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] On March 30, 2017, the Applicant, W. S. (Claimant), renewed an initial claim for Employment Insurance benefits that was filed on April 17, 2016. He submitted an application to antedate his claim to November 20, 2016—the day he lost his employment. The Canada Employment Insurance Commission refused to antedate the benefits claim because the Claimant did not demonstrate that he had good cause for the delay. The Claimant requested a review of this decision, but the Commission upheld its original decision. The Claimant appealed that decision to the Tribunal's General Division.

[3] The General Division found that a reasonable and prudent person in the Claimant's situation would have contacted the Commission to determine what their rights were. It found that the Claimant should have approached the Commission to verify the information from his employer that indicated he would not be entitled to Employment Insurance. The General Division also found that having part-time employment was not good cause for the delay. The General Division concluded that the Claimant did not have good cause for the delay throughout the period in question.

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

[5] In support of his application for leave to appeal, the Claimant argues that the General Division erred in law when it erroneously applied the criteria established in the case law to determine what constitutes good cause under s. 10(5) of the *Employment Insurance Act* (EI Act). He also submits that the General Division erred in law by considering the circumstances separately rather than as a whole. The Claimant argues that the General Division imposed an excessively heavy burden on him by requiring him to demonstrate an inability to act.

[6] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error that may give the appeal a reasonable chance of success.

[7] The Tribunal grants leave to appeal because the Claimant has raised at least one ground of appeal based on which the appeal has a reasonable chance of success.

## **ISSUE**

[8] In his grounds of appeal, has the Claimant raised a reviewable error made by the General Division that may give the appeal a reasonable chance of success?

## **ANALYSIS**

[9] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out 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 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 of the case. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the application for leave to appeal stage, the Claimant does not have to prove his case, but he must establish that his appeal has a reasonable chance of success. In other words, he must show that there is arguably some reviewable error based on which the appeal may succeed.

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

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

**Issue: In his grounds of appeal, has the Claimant raised a reviewable error made by the General Division that may give the appeal a reasonable chance of success?**

[13] In support of his application for leave to appeal, the Claimant argues that the General Division erred in law when it erroneously applied the criteria established in the case law to determine what constitutes good cause under s. 10(5) of the EI Act. He also submits that the General Division erred in law by considering the circumstances separately rather than as a whole. The Claimant argues that the General Division imposed an excessively heavy burden on him by requiring him to demonstrate an inability to act.

[14] After reviewing the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Claimant has raised an issue concerning the General Division's interpretation of s. 10(5) of the EI Act that may lead to the setting aside of the decision under review.

**CONCLUSION**

[15] The Tribunal grants leave to appeal to the Appeal Division.

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	Richard-Alexandre Laniel, (Ouellet Nadon), Counsel for the Applicant
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