



Social Security  
Tribunal of Canada  
[TRANSLATION]

Tribunal de la sécurité  
sociale du Canada

Citation: *K. V. v. Canada Employment Insurance Commission*, 2018 SST 830

Tribunal File Number: AD-18-440

BETWEEN:

**K. V.**

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 23, 2018

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, K. V. (Claimant), made an initial claim for benefits. After a request for reconsideration, [the Respondent] the Canada Employment Insurance Commission rendered a decision under s. 112 of the *Employment Insurance Act* (EI Act) on September 25, 2017. The Claimant appealed to the General Division on December 7, 2017, after the established 30-day deadline.

[3] The General Division found that an extension of time to appeal pursuant to s. 52(2) of the *Department of Employment and Social Development Act* (DESD Act) should be refused. It found that the Claimant had not shown a continuing intention to pursue the appeal, that she had not given a reasonable explanation for the delay, and that she did not have an arguable case. The General Division found that it did not serve the interests of justice to allow an extension of time, even in the absence of prejudice to the Commission.

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

[5] In support of her application for leave to appeal, the Claimant reiterated the arguments that she presented before the General Division. She submits that the two agents of the Commission told her that she was eligible for an extension of her qualifying period up to 104 weeks. Furthermore, she submits that she was pursuing training paid for by Emploi-Québec and that she was unable to work because of an injury.

[6] On July 19, 2018, the Tribunal wrote to the Claimant to request a detailed explanation of her grounds of appeal in support of the application for leave to appeal under s. 58(1) of the DESD Act. The Claimant did not respond to the Tribunal's request.

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

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

### **ISSUE**

[9] In her 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**

[10] Subsection 58(1) of the 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 made in a perverse or capricious manner or without regard for the material before it.

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

[12] The Tribunal will grant leave to appeal if it is satisfied that at least one of the above-mentioned grounds of appeal has a reasonable chance of success.

[13] 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 justify setting aside the decision under review.

**Issue: In her 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?**

[14] In support of her application for leave to appeal, the Claimant reiterated the arguments that she presented before the General Division. She submits that the two agents of the Commission told her that she was eligible for an extension of her qualifying period up to 104 weeks. Furthermore, she submits that she was pursuing training paid for by Emploi-Québec and that she was unable to work because of an injury.

[15] The Commission's review decision was sent to the Claimant on September 25, 2017. On September 26, 2017, the Commission verbally informed the Claimant on two occasions that her reconsideration request had been refused and that she could appeal to the Social Security Tribunal. The Claimant filed her appeal to the General Division on December 7, 2017, after the established 30-day deadline.

[16] The DESD Act confers upon the General Division the discretionary power to extend the time for appeals.

[17] The General Division found that an extension of time under s. 52(2) of the DESD Act should be refused. It determined that the Claimant had not shown a continuing intention to pursue the appeal, that she had failed to provide a reasonable explanation for the delay, and that she had no arguable case. The General Division found that it did not serve the interests of justice to allow an extension of time, even in the absence of prejudice to the Commission.

[18] For the appeal to be allowed, the Claimant would need to demonstrate that the General Division inappropriately exercised its discretionary power when it refused to grant an extension of time. An improper exercise of discretion occurs when a General Division member gives insufficient weight to relevant factors, proceeds on a wrong principle of law, or erroneously misapprehends the facts or when an obvious injustice would result.

[19] The Claimant accumulated 654 hours of insurable employment between June 19, 2016, and June 17, 2017. However, she needed 665 hours of insurable employment to qualify for benefits.

[20] The medical evidence before the General Division did not show that the Applicant [*sic*] was unable to work during the qualifying period from June 19, 2016, to June 19, 2017. Furthermore, nothing in the file indicates that the Commission had authorized the Claimant to take a training course.

[21] Because the Claimant meets none of the reasons that would justify extending the reference period, this period cannot be extended under s. 8(2) of the EI Act.

[22] Given these facts, it did not serve the interests of justice to proceed with the appeal.

[23] The Tribunal finds that, despite the Tribunal's specific request, the Claimant has not raised any issue of law, fact, or jurisdiction that might lead to the setting aside the decision under review.

[24] Upon 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 chance but to find that the appeal has no reasonable chance of success.

## **CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	K. V., self-represented
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