



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *The Estate of D. L. v. Canada Employment Insurance Commission*, 2018 SST 888

Tribunal File Number: AD-18-502

BETWEEN:

The Estate of D. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: September 7, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal the decision made by the General Division of the Social Security Tribunal of Canada on June 26, 2018, is granted.

OVERVIEW

[2] The Claimant, D. L., was laid off from his job in January 2017. He did not apply for Employment Insurance benefits before passing away a few months later. The Applicant, the Estate of D. L., made a claim for payment of benefits on behalf of a deceased person to access the benefits that could have been paid to D. L. if he had made a claim for them.

[3] The Respondent, the Canada Employment Insurance Commission, refused the Applicant's claim because the Applicant had failed to establish good cause for the delay in making the claim.

[4] The Applicant submits that the Claimant qualified for receiving benefits and that he would have received them if he had applied for them. They do not know why he failed to apply for them.

[5] The Applicant appealed the Respondent's decision to deny their claim. The General Division found that the requirements of the *Employment Insurance Act* (Act) and *Employment Insurance Regulations* (Regulations) for late claims apply to situations of deceased persons. One of the criteria for a late claim is that there is good cause for the delay. There is no evidence that can establish that the Claimant had such cause.

[6] In its application for leave to appeal, the Applicant argues that the General Division erred in law in applying the same burden of proof to a claim made by an estate that would be applied to one made by a claimant. The Applicant also argues that the Claimant had a psychiatric issue and that this is likely why he did not file his claim before his death.

[7] The appeal has a reasonable chance of success because there is an argument that the General Division erred in its interpretation and application of the sections of the Act and Regulations regarding this claim.

ISSUE

[8] Is there an argument that the General Division erred in law in its interpretation and application of the legislative provisions?

ANALYSIS

[9] 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.¹

[10] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there a ground of appeal on which the appeal may succeed?²

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error. The only reviewable errors are the following:⁴ the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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] Even though the Applicant has presented more than one ground of appeal, the Appeal Division does not need to respond to all of the grounds raised. Different grounds of appeal may be interdependent, so it may be impractical to analyze each ground separately. One ground of

¹ *Department of Employment and Social Development Act* (DESDA), ss. 56(1) and 58(3).

² *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.

³ DESDA, s. 58(2).

⁴ DESDA, s. 58(1).

appeal may be sufficient to justify granting leave to appeal.⁵ As a result, I will address one possible error that warrants further review and not every possible error.

Is there an argument that the General Division erred in law in its interpretation and application of the legislative provisions?

[13] The Applicant alleges that the General Division erred in its application of the Act by placing the same burden of proof on a claim made by an estate as one made by a claimant. The Applicant submits that a deceased claimant cannot demonstrate the reasons for the delay and that placing the same burden on their estate undermines the intent of the legislature to grant a claimant's estate access to benefits.

[14] Specifically, the Applicant argues that the legal test applied by the General Division, in which the Applicant must show that there was good cause for the delay, was an error. The legal test should have been the following: On the balance of probabilities, did the deceased Claimant likely have good cause for not making a claim?

[15] According to the Applicant, the Claimant had an issue with substance abuse and had isolated himself from his family and friends. It is therefore likely that his health situation was the reason why he did not make a claim. He had regularly made claims before the year in question.

[16] If the General Division misapplied or misinterpreted the legislative provisions, it would have erred in law in making its decision. If it applied the incorrect burden of proof, it would have erred in law in making its decision.

[17] It is too early for the Appeal Division to decide whether the General Division erred in its interpretation and application of the legislative provisions or the burden of proof, but there is a ground on which the appeal may succeed.

[18] For these reasons, I find that there is an argument that the General Division erred in law.

⁵ *Mette v. Canada (Attorney General)*, 2016 FCA 276.

CONCLUSION

[19] Leave to appeal is granted.

[20] I invite the parties to make submissions on whether a hearing is appropriate and, if so, on the form of hearing and the merits of the appeal.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE(S):	Y. L. and M. L., for the Applicant
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