



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation : *P. B. v. Canada Employment Insurance Commission*, 2018 SST 875

Tribunal File Number: AD-18-465

BETWEEN:

**P. B.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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

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Decision on Request for Extension of Time Pierre Lafontaine  
by:

Date of Decision: September 7, 2018

## DECISION AND REASONS

### DECISION

[1] The Tribunal refuses an extension of time to file an application for leave to appeal.

### OVERVIEW

[2] The Applicant, P. B. (Claimant), worked for X. (employer) from July 27, 2015, to January 8, 2016. He stopped working for this employer after receiving leave to take care of his family. The Respondent, the Canada Employment Insurance Commission, determined that the Claimant was not available for work. The Claimant requested a reconsideration of this decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that, from January 11, 2016, to February 26, 2016, the Claimant did not demonstrate that, for each working day of his benefit period, he was capable of and available for work but unable to obtain suitable employment. It found that the Claimant's entitlement for receiving Employment Insurance benefits could not be established because he failed to demonstrate that he was available for work from January 11 to February 26, 2016, pursuant to s. 18(1) of the *Employment Insurance Act* (EI Act).

[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 he filed his application late because he was on vacation and was undergoing training. He then sent the form to the wrong address. He highlights that he won his case the first two times but that he lost the third time because he was not present at the telephone hearing.

[6] The Tribunal must decide whether to allow the request for an extension of time and, if so, whether to grant leave to appeal.

[7] The Tribunal refuses an extension of time to file an application for leave to appeal.

## **ISSUES**

[8] Should an extension of time be granted so that the Claimant can file his application for leave to appeal?

[9] If so, in his grounds of appeal, has the Claimant raised a reviewable error that the General Division may have made that gives the appeal a reasonable chance of success?

## **ANALYSIS**

### **Issue 1: Should an extension of time be granted so that the Claimant can file his application for leave to appeal?**

[10] When deciding whether to grant an extension of time to file an appeal, the first question to ask is whether it would serve the interests of justice to grant this extension.<sup>1</sup>

[11] Relevant factors to consider are whether:

- a) the appeal discloses an arguable case;
- b) special circumstances justify the delay in filing the notice of appeal;
- c) the delay is excessive; and
- d) the Respondent will be prejudiced if the extension is granted.

[12] Although the Commission would not be prejudiced by granting an extension of time to file the application for leave to appeal, the Tribunal finds that the delay of six months that elapsed before the Claimant filed the application is excessive. There are no special circumstances that would have prevented the Claimant from filing his application

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<sup>1</sup> *X (Re)*, 2014 FCA 249; *Grewal v. Canada (Minister of Employment and Immigration)*, [1985] 2 FC 263 (FCA).

for leave to appeal on time. Being on vacation or undergoing training is not a special circumstance.

[13] Furthermore, the Tribunal is not convinced that the Claimant has raised an arguable case or that the appeal has a reasonable chance of success.

[14] In this case, the Claimant admitted that he was not available for work.<sup>2</sup>

[15] In addition, the Federal Court of Appeal teaches that needing to care for other people on a continuing and ongoing basis means that a person is not available for full-time work, as required by s. 18 of the EI Act.<sup>3</sup>

[16] The Tribunal also finds that the Claimant did not attend the General Division hearing despite having received the notice to appear. Nor did he request an adjournment from the General Division before the hearing took place.

[17] The Tribunal believes that the Claimant would essentially like the Appeal Division to reassess and reweigh the evidence that was presented before the General Division; these are matters for the trier of fact and not an appeal court.

[18] The Claimant has not raised any errors of jurisdiction or law that the General Division may have made to support his application for leave to appeal. Nor has he raised any erroneous findings of fact that it may have made in a perverse or capricious manner or without regard for the material before it when coming to its decision.

[19] After considering the above factors, the Tribunal is not satisfied that granting an extension of time is in the interests of justice.

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<sup>2</sup> GD3-25.

<sup>3</sup> *Canada (Attorney General) v. Maughan*, 2012 FCA 35.

**CONCLUSION**

[20] The Tribunal refuses an extension of time to file an application for leave to appeal.

Pierre Lafontaine

Member, Appeal Division

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| REPRESENTATIVE: | P. B., self-represented |
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