



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. M. v. Canada Employment Insurance Commission*, 2018 SST 878

Tribunal File Number: AD-18-405

BETWEEN:

**A. M.**

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: Janet Lew

Date of Decision: September 7, 2018

## DECISION AND REASONS

### DECISION

[1] The application for leave to appeal is refused.

### OVERVIEW

[2] The Applicant, A. M. (Claimant), took on seasonal employment as an irrigation technician. The position was contracted to end in November 2017. By late summer, the Claimant recognized that his earnings would be insufficient to meet any new housing commitments, so he left his employment before September 2017 and returned home to live with his family in X, rather than risk facing homelessness in X. He applied for Employment Insurance regular benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), denied his application—initially and upon reconsideration—having found that he had voluntarily left his employment without just cause under the *Employment Insurance Act* (EIA). The Claimant appealed the Commission’s reconsideration decision to the General Division.

[4] The General Division determined that the Claimant did not have just cause within the meaning of the EIA to voluntarily leave his employment when he did. The General Division also determined that the Claimant was disqualified from receiving benefits, in accordance with ss. 29 and 30 of the EIA.

[5] The General Division rendered its decision on May 10, 2018. The Claimant filed an application requesting leave to appeal the General Division’s decision on June 27, 2018, beyond the 30-day filing deadline. He explained that it may have appeared late, but he had received the General Division’s decision sometime between May 16 and 18, 2018, and needed some time to seek assistance with pursuing an appeal.

[6] The Claimant seeks leave to appeal the General Division’s decision, on the ground that the General Division erred in law and 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.

[7] I must now decide whether the application requesting leave to appeal is late and, if so, whether I should grant an extension for filing. Furthermore, if I should grant an extension, I must determine whether the appeal has a reasonable chance of success. For the reasons described below, I am not satisfied that the appeal has a reasonable chance of success.

## ISSUES

[8] The issues are as follows:

- (a) Did the Claimant file his application requesting leave to appeal on time? If not, should I grant an extension of time for filing?
- (b) If I grant an extension of time for filing, does the appeal have a reasonable chance of success? Is there an arguable case that the General Division failed to consider s. 29(c)(viii) of the *Employment Insurance Act*?
- (c) Is there an arguable case that the General Division based its decision on an erroneous finding without regard for the Claimant's financial circumstances?

## ANALYSIS

[9] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division 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] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the grounds of appeal set out under s. 58(1) of the DESDA and that the appeal has a

reasonable chance of success. It is a relatively low bar. Claimants do not have to prove their case; they simply have to establish that the appeal has a reasonable chance of success based on a reviewable error. The Federal Court endorsed this approach in *Joseph v. Canada (Attorney General)*.<sup>1</sup>

**Issue 1: Was the Claimant late in filing an application requesting leave to appeal? If so, should I grant an extension of time for filing?**

[11] Yes, I find that the Claimant was late in filing an application requesting leave to appeal. However, I am prepared to grant an extension of time because it is in the interests of justice:<sup>2</sup> the delay is relatively minor (little more than a week), the Respondent is unlikely to face any prejudice, and the Claimant has provided a reasonable explanation to account for the delay.<sup>3</sup>

**Issue 2: Is there an arguable case that the General Division failed to consider s. 29(c)(vii) of the *Employment Insurance Act*?**

[12] The Claimant submits that the General Division failed to consider and apply s. 29(c)(vii) of the EIA. The subparagraph provides that just cause for voluntarily leaving an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including “significant modification of terms and conditions respecting wages or salary.”

[13] The Claimant argues that the employer had agreed that it would pay a base salary, as well as a bonus. The Claimant asserts that the prospect of a bonus enticed him into accepting the position in the first instance. The Claimant notes that he received bonuses from the time that he began work on May 23, 2017 to July 22, 2017, but did not receive any bonus after July 22, 2017. He suggests that his employer’s failure to pay a bonus constitutes a significant modification of the terms and conditions of his employment.

[14] I do not see that there was any evidence in the proceedings before the General Division to show that the Claimant had argued that there was a significant modification of the terms and conditions of his employment respecting his wages or salary. Furthermore, while the Record of Employment indicates that there were pay periods in which bonuses were paid, there was no

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<sup>1</sup> *Joseph v. Canada (Attorney General)*, 2017 FC 391.

<sup>2</sup> *Canada (Attorney General) v. Larkman*, 2012 FCA 20.

<sup>3</sup> *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 833.

evidence that the Claimant was entitled to or that the employer had guaranteed the payment of any bonuses. While bonuses might have been expected, there is no evidence before the General Division that they were guaranteed. Without this evidentiary foundation, there was no basis for the General Division to consider whether s. 29(c)(vii) of the EIA was applicable. Accordingly, I am not satisfied that there is an arguable case that the General Division erred in law by not determining whether s. 29(c)(vii) of the EIA was applicable.

**Issue 3: Is there an arguable case that the General Division based its decision on an erroneous finding of fact without regard for the Claimant's financial circumstances?**

[15] The Claimant argues that the General Division's focus was misplaced. He asserts that the General Division based its decision on the issue of the Claimant's housing, rather than on his financial circumstances, as described in his application requesting leave to appeal filed on June 27, 2018.<sup>4</sup>

[16] The issue of the Claimant's personal financial circumstances was irrelevant for the purposes of determining whether the Claimant had just cause for voluntarily leaving his employment under s. 29 of the EIA. The Claimant's financial circumstances and housing issues prompted the Claimant to quit his employment, but neither established just cause under s. 29. As the General Division noted, these might have been good reasons, but "[j]ust cause is not the same as a good reason." The legal test that the General Division had to apply was to determine whether leaving his employment was the only reasonable course of action available to the Claimant, considering all the circumstances.

[17] I find that the General Division properly identified and applied the appropriate legal test and that it did not overlook or misconstrue any important information. Accordingly, I am not satisfied that there is an arguable case that the General Division based its decision on an erroneous finding of fact that it made without regard for the material before it.

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<sup>4</sup> Letter dated June 15, 2018, prepared by M. M., at AD1.

**CONCLUSION**

[18] The application for leave to appeal is refused.

Janet Lew  
Member, Appeal Division

APPEARANCES:	A. M., Applicant  S. M., for the Applicant
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