



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. F. v. Canada Employment Insurance Commission*, 2018 SST 890

Tribunal File Number: AD-18-551

BETWEEN:

D. F.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 12, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, D. F. (Claimant), maintains that her claim for benefits should be extended to December 30, 2017, instead of September 30, 2017, and that, as a result, she should have 16 weeks of benefits remaining. The [Respondent, the] Canada Employment Insurance Commission[,] is of the opinion that the end date for the claim for benefits is indeed September 30, 2017, because the allocation of the Applicant's earnings did not prevent the payment of Employment Insurance benefits and therefore did not allow for the extension of the benefit period.

[3] The General Division found that no reason under s. 10 of the *Employment Insurance Act* (EI Act) allowed for the extension of the Applicant's benefit period and that it should have ended after 52 weeks on September 30, 2017.

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

[5] In support of her application for leave to appeal, the Claimant argued that the General Division erred in law in its application of s. 10 of the EI Act.

[6] 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.

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

ISSUE

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error made by the General Division?

ANALYSIS

[9] Subsection 58(1) of the *Department of Employment and Social Development Act* (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.

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

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

[12] 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: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

[13] In support of her application for leave to appeal, the Claimant argued that the General Division made an error of law in its interpretation of s. 10 of the EI Act and that s. 10(10)(c) of the EI Act specifies that the benefit period may be extended if a claimant

is receiving compensation payments for an work-related illness or workplace injury. She maintains that she was not entitled to benefits because she was receiving sickness benefit payments from October 2, 2016, to April 30, 2017, and that, as a result, the benefit period should be extended to December 30, 2017.

[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 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:	D, F., self-represented
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