



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *J. M. v. Canada Employment Insurance Commission*, 2018 SST 937

Tribunal File Number: AD-18-488

BETWEEN:

J. M.

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 27, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal the decision rendered by the General Division of the Social Security Tribunal of Canada on June 29, 2018, is granted.

OVERVIEW

[2] In May 2016, the Applicant, J. M., applied for Employment Insurance (EI) benefits in relation to the suspension of his employment in February 2016. He also applied for a renewal of his benefits in October 2017. The Respondent, the Canada Employment Insurance Commission [(Commission)], refused the application because the Applicant had not established just cause for the delay in submitting his applications.

[3] The Applicant argues that he had many reasons for the delay: he was disputing the suspension and had filed a complaint against the employer; the suspension had a significant psychological effect on him, the Commission did not follow up on his initial application, which he submitted at the time of his suspension; he had received EI sickness benefits and believed that he was ineligible for EI regular benefits.

[4] The Applicant appealed the Commission's decision. The General Division found that the Applicant did not have good cause for the delay.

[5] The Applicant submits that the General Division failed to observe a principle of natural justice, made an error of law, and based its decision on an important error regarding the facts in the appeal file.

[6] The appeal has a reasonable chance of success because there is an arguable case that the General Division made an error in its interpretation and application of the relevant legislation.

ISSUE

[7] Is there an arguable case that the General Division made an error when finding that the Applicant did not have good cause for the delay?

ANALYSIS

[8] An applicant must seek leave to appeal a decision rendered by the General Division. An appeal may be brought only if leave to appeal is granted, and the Appeal Division must either grant or refuse leave to appeal.¹

[9] 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 might succeed?²

[10] 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; made an error of 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 had made in a perverse or capricious manner or without regard for the material before it.

[11] Although the Applicant presented more than one ground of appeal, the Appeal Division does not need to address all the grounds raised. Different grounds of appeal may be interrelated, so it may be difficult to analyze each ground separately. One ground of appeal may suffice to justify granting leave to appeal.⁵ As a result, I will address one potential error that warrants further review and not every possible error.

¹ *Department of Employment and Social Development Act* (DESDA) at 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, at s 58(2).

⁴ DESDA, at s 58(1).

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

Issue: Is there an arguable case that the General Division made an error when finding that the Applicant did not have good cause for the delay?

[12] According to the Applicant, the General Division made an error in its application of the legislation by imposing a burden of proof that exceeds the one required by the applicable case law.

[13] He also argues that, although the General Division acknowledged that the applicable test is objective and subjective, the General Division refused and arbitrarily failed to consider the determinative evidence before it. In other words, the General Division misapplied the legal test.

[14] If the General Division misapplied or misinterpreted the applicable case law or the legal test, it made an error of law in making its decision. If it imposed the wrong burden of proof, it also made an error of law in making its decision.

[15] It is too early for the Appeal Division to decide on the issue of whether the General Division made an error in its interpretation and application of the case law, the legal test, or the burden of proof, but there is a ground of appeal on which the appeal might succeed.

[16] For these reasons, I find that there is an arguable case that the General Division made an error of law.

CONCLUSION

[17] Leave to appeal is granted.

[18] I invite the parties to make submissions on whether a hearing is needed and, if so, what type of hearing is appropriate, as well as on the merits of the appeal.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	Alain Béliveau, Counsel for the Applicant J. M.
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