



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *P. T. v. Canada Employment Insurance Commission*, 2018 SST 968

Tribunal File Number: AD-18-536

BETWEEN:

P. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: October 5, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, P. T. (Claimant), applied for Employment Insurance benefits and a benefit period was established effective December 17, 2017. The Claimant then asked to have this claim antedated to October 15, 2017, the beginning of his unemployment. The [Respondent, the] Canada Employment Insurance Commission [(Commission),] refused to antedate the claim because it found that the Claimant had not shown good cause for the delay in his application.

[3] The Commission also found that the Claimant was not available for work as of December 17, 2017, because he made no efforts to find work after he submitted his application and because he limited his availability to certain jobs.

[4] The General Division found that the claim for benefits could not be antedated because the Claimant had not shown good cause for the delay in his application for benefits. It also found that the Claimant had not shown that he was available to work.

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

[6] In support of his application for leave to appeal, the Claimant argues that he never received the General Division notice of hearing.

[7] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error that gives the appeal a reasonable chance of success.

[8] The Tribunal grants leave to appeal because the Claimant has raised at least one ground of appeal that gives the appeal a reasonable chance of success.

ISSUE

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

ANALYSIS

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

[11] 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 his case, but he must establish that his appeal has a reasonable chance of success. In other words, he must establish that there is an arguable case that there is a reviewable error that gives the appeal a reasonable chance of success.

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

[13] This means that the Tribunal must be in a position to determine, in accordance with section 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?

[14] In support of his application for leave to appeal, the Claimant argues that he never received the General Division notice of hearing. Basically, he argues that the General Division failed to observe a principle of natural justice.

[15] Upon review of the appeal file, the General Division 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 a question of natural justice that may lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	P. T., self-represented
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