



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. C. v. Canada Employment Insurance Commission*, 2018 SST 970

Tribunal File Number: AD-18-625

BETWEEN:

M. C.

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] On July 11, 2017, the Applicant, M. C. (Claimant), filed an antedate request with the [Respondent, the Canada Employment Insurance] Commission [(Commission),] so that his benefit period would begin on July 7, 2016. The Commission informed him that he was not entitled to benefits starting June 26, 2016, because he had not shown good cause for the delay, from June 26, 2016, to July 10, 2017, in applying for benefits. The Commission determined that the Claimant had not shown good cause for the delay in filing his Record of Employment.

[3] The Claimant requested a reconsideration of this decision on the basis that the letter the Commission sent him on August 5, 2016, did not give him sufficiently complete information about the establishment of his benefit period and that he believed he would not be able to receive benefits despite the number of hours he had accumulated.

[4] The General Division found that, although the Claimant had not received his Record of Employment, he could have asked the Commission questions to that effect. It found that a reasonable person would have contacted the Commission right away to clarify the process. The General Division found that there were no exceptional circumstances that prevented the Claimant from asking about his rights and obligations during the delay.

[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 submits that the General Division made an error by failing to take into account the specific context of the file. The Claimant argues that he received incorrect information from the Commission's

agent, that 14 months passed before he received his Record of Employment from an employer, and that an unpublicized legislative change occurred during that time. He submits that the General Division made an error, arguing that he did what a reasonable person would have done in his situation.

[7] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error that might give 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 based on which the appeal has a reasonable chance of success.

ISSUE

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

ANALYSIS

[10] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the only grounds of appeal for 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.

[11] An application for leave to appeal is a preliminary step to a hearing on the merits of the case. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; instead he must establish that his appeal has a reasonable chance of success. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

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

[13] This means that the Tribunal must, in accordance with s. 58(1) of the DESDA, be in a position to determine whether there is an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the decision under review.

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

[14] In support of his application for leave to appeal, the Claimant submits that the General Division made an error by failing to take into account the file's specific context. The Claimant argues that he received incorrect information from a Commission agent at the beginning, that 14 months then passed before he received his Record of Employment from an employer, and that an unpublicized legislative change occurred during that time. He argues that the General Division made an error in its interpretation of the antedate legal test because he did what a reasonable person would have done in his situation.

[15] 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	Denis Poudrier, Representative for the Applicant
-----------------	--