



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. A. v. Canada Employment Insurance Commission*, 2018 SST 1120

Tribunal File Number: AD-18-677

BETWEEN:

**C. A.**

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: October 31, 2018

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, C. A. (Claimant), was laid off from her employment with a catering company on August 30, 2017, due to a shortage of work. She immediately sought and secured other employment with a food services company, but shortly thereafter, a long-term care facility offered her the position of fine dining coordinator. The Claimant left her employment with the food services company for the long-term care facility but had to undergo a rigorous and lengthy hiring process that included background checks and medical testing before she saw her first paycheck in late October 2017.

[3] The Claimant applied for Employment Insurance regular benefits for the period between August 30, 2017 and October 23, 2017, when she did not have any employment income. However, she waited until she had a Record of Employment from the catering company before she applied for benefits. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant's application was filed late and that it could not be antedated because she had not proven that she had "good cause to apply late for benefits."<sup>1</sup> The Commission maintained this position on reconsideration.<sup>2</sup> The Commission also addressed another issue in its initial decision, but it overturned its decision on reconsideration. The other matter was not the subject of any appeal to the General Division and it is not before me.

[4] The Claimant appealed the Commission's reconsideration decision on the antedate issue. The General Division found that the claim could not be antedated because it found that "the Claimant failed to show that she had good cause throughout the entire period of the delay in making an initial claim for benefits."<sup>3</sup>

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<sup>1</sup> Commission's letter dated March 6, 2018.

<sup>2</sup> Commission's reconsideration decision dated April 17, 2018, at GD3-30 to GD3-31.

<sup>3</sup> General Division decision, at paragraph 1.

[5] The Claimant now seeks leave to appeal the General Division's decision on the ground that the General Division erred in law. I must now decide whether there is an arguable case on this ground. For the reasons that follow, I am not satisfied that there is an arguable case that the General Division erred or that the appeal has a reasonable chance of success.

## ISSUE

[6] Is there an arguable case that the General Division erred in law when it decided that the Claimant's claim could not be antedated to August 30, 2017?

## ANALYSIS

[7] 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.

[8] 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. This 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>4</sup>

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<sup>4</sup> *Joseph v. Canada (Attorney General)*, 2017 FC 391.

**Is there an arguable case that the General Division erred in law when it decided that the Claimant's claim could not be antedated to August 30, 2017?**

[9] The Claimant asserts that the General Division erred in law when determining whether she had good cause throughout the entire period of the delay in making an initial claim for Employment Insurance benefits. In particular, she argues that the General Division erred by finding that she did not act as a reasonable person would have done in her situation. She maintains that she did act as a reasonable person would have done, but by the time she realized that she should apply for Employment Insurance benefits, it was "too late." She argues that there was no reason for her to seek any information about Employment Insurance earlier in the process because she had secured employment shortly after being laid off in August 2017.

[10] The General Division properly cited and applied s. 10(4) of the *Employment Insurance Act*. The section describes when an initial claim for benefits can be antedated: it requires claimants to show that they "qualified to receive benefits on the earlier day" **and** that "there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made."

[11] The General Division cited the applicable jurisprudence that confirms that applicants have an obligation and a duty to file a claim for Employment Insurance benefits promptly and confirms that a reasonable person is expected to take reasonably prompt steps to determine their entitlement to Employment Insurance benefits. The General Division also cited the applicable jurisprudence that defines what constitutes good cause.

[12] The Claimant has not referred me to any case authorities to suggest that the General Division erred in its interpretation and application of the applicable provisions of the *Employment Insurance Act* or of the case authorities.

[13] The General Division considered the Claimant's arguments that she had acted as a reasonable person would have done in her situation. The General Division found that the Claimant had good cause for the delay from August 27, 2017 to September 28, 2017, because she did not expect to be unemployed for long. The General Division accepted that this was a reasonable belief, given that the Claimant had multiple job offers within her first month of unemployment. However, after September 28, 2017, the Claimant delayed in making a claim for

benefits because she had yet to receive a Record of Employment from the catering company at which she had worked. The General Division found that the delay after September 28, 2017 was unreasonable because the Claimant nevertheless had a duty to file a claim promptly, regardless of whether her employer had produced a Record of Employment. The General Division found that a reasonable person would have also contacted the Commission for information about her rights and obligations under the *Employment Insurance Act*. The General Division's decision was consistent with the case law and with s. 10(4) of the *Employment Insurance Act*.

[14] If the Claimant is asking that I reassess this matter, I am unable to do so under s. 58(1) of the DESDA, as indicated above in paragraph 7. The subsection does not provide for any reassessments as a ground of appeal. I am not satisfied that there is an arguable case that a reassessment is appropriate.

[15] Furthermore, I have reviewed the underlying record and do not see that the General Division erred in law, whether or not the error appears on the record, or that it failed to properly account for any of the key evidence before it. It is for these reasons that I am not satisfied that the appeal has a reasonable chance of success.

**CONCLUSION**

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

Janet Lew  
Member, Appeal Division

APPEARANCES:	C. A., self-represented