



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. S. v. Canada Employment Insurance Commission*, 2018 SST 1149

Tribunal File Number: AD-18-590

BETWEEN:

**L. S.**

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: Shu-Tai Cheng

Date of Decision: November 14, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, L. S., filed a claim for Employment Insurance (EI) benefits in February 2018 after being laid off from his job in October 2017.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), refused the claim for benefits because the Applicant did not have good cause during the entire period from October 6, 2017, to February 6, 2018, to apply late for benefits. The Applicant requested a reconsideration of that decision, but the Commission maintained its initial decision.

[4] The Applicant appealed the Commission's reconsideration decision to the Tribunal's General Division. The General Division found that the Applicant had not made any efforts to contact the Commission about his rights and obligations regarding EI benefits and that he did not meet the legal test of a "reasonable and prudent person." Therefore, it found that he did not have good cause throughout the period in question for the delay in filing his claim.

[5] The Applicant applied to the Appeal Division for leave to appeal the General Division decision, submitting that the General Division did not properly evaluate his case. He argues that the General Division did not consider his personal circumstances and breached a principle of natural justice.

[6] I find that the appeal does not have a reasonable chance of success because the application simply repeats arguments the Applicant made to the General Division and does not raise any reviewable errors.

### **ISSUE**

[7] Is there an arguable case that the General Division failed to observe a principle of natural justice by not considering the Applicant's personal circumstances?

## ANALYSIS

[8] An applicant must seek leave to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.<sup>1</sup>

[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 an arguable ground upon which the proposed appeal might succeed?<sup>2</sup>

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error.<sup>4</sup> The only 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] The Applicant submits that the General Division failed to consider his personal circumstances. He argues that he is a reasonable person.

**Issue: Is there an arguable case that the General Division failed to observe a principle of natural justice by not considering the Applicant's personal circumstances?**

[12] I find that there is no arguable case that the General Division failed to observe a principle of natural justice.

[13] “Natural justice” refers to fairness of process and includes such procedural protections as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against them. It is settled law that an applicant has the right to expect a fair hearing with a full opportunity to present their case before an impartial decision-maker.<sup>5</sup>

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<sup>1</sup> *Department of Employment and Social Development Act* (DESD Act), at ss 56(1) and 58(3).

<sup>2</sup> *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.

<sup>3</sup> DESD Act, at s 58(2).

<sup>4</sup> *Ibid.*, at s 58(1).

<sup>5</sup> *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21 to 22.

[14] The Applicant participated in the teleconference hearing with the General Division. He testified that he was late filing his claim for benefits because his personal circumstances caused him a lot of stress during the relevant period and that he was waiting for his Record of Employment (ROE) to arrive by mail.

[15] The application did not explain how the General Division failed to observe a principle of natural justice, and it was not supported by material evidence about how the General Division member conducted the proceedings. There is no error relating to natural justice that is apparent on the face of the record, either.

[16] The appeal does not have a reasonable chance of success based on this ground.

[17] This appeal depends on whether the Applicant had good cause for delay in filing his claim throughout the entire period of the delay.<sup>6</sup> The onus to prove good cause is on the Applicant.<sup>7</sup> The question that decision-makers must ask when assessing good cause is whether an applicant acted as a reasonable person would have acted in the same situation to satisfy themselves of both their rights and obligations under the *Employment Insurance Act*.<sup>8</sup>

[18] The General Division correctly stated the relevant legislative provisions, the binding jurisprudence, and the applicable legal tests.<sup>9</sup>

[19] The General Division determined that the Applicant did not take any steps to inquire about his entitlement to EI benefits from October 2017 to late January or early February 2018. The General Division accepted the Applicant's evidence that he did not take any steps because he was waiting to receive his ROE by mail before filing a claim; he did not know that his employer had issued the ROE electronically; and he had moved, had a death in the family, was caring for his ill mother, and was dealing with his own medical issues.<sup>10</sup>

[20] Nevertheless, the General Division concluded that the Applicant "did not do what a reasonable person in the same circumstances would have done by making the necessary inquiries

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<sup>6</sup> *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>7</sup> *Canada (Attorney General) v Chalk*, 2010 FCA 243; *Canada (Attorney General) v Trinh*, 2010 FCA 335.

<sup>8</sup> *Kaler*, *supra* note 6; *Canada (Attorney General) v Beaudin*, 2005 FCA 123.

<sup>9</sup> General Division decision, at paras 4 to 6.

<sup>10</sup> *Ibid.*, at paras 8 to 11.

about his entitlements and obligations under the [*Employment Insurance*] Act, including determining the whereabouts of his [ROE].”<sup>11</sup>

[21] The General Division correctly applied the legal tests established in binding Federal Court of Appeal jurisprudence.

[22] The General Division considered the Applicant’s arguments and the evidence on file. It considered his testimony and each of the reasons he gave to explain his delay in applying for EI benefits. The General Division decision contains an analysis of each of the Applicant’s arguments, including the argument that the Applicant was genuinely unaware that his employer had issued his ROE electronically. The General Division did not fail to consider the Applicant’s relevant arguments.

[23] Simply repeating the Applicant’s arguments falls short of raising a ground of appeal that is based on a reviewable error.

[24] The Applicant argues that, in light of his testimony, his work history, his family responsibilities, and his terminal illness and poor memory, he is a reasonable person.

[25] It is the General Division’s role to find the facts and apply the correct legal test to the facts. The General Division did that, and it did not commit a reviewable error in so doing.

[26] I have read and considered the General Division decision and the documentary record. I find that the General Division did not overlook or misconstrue any important evidence. There is no suggestion that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction or that it erred in law in coming to its decision.

[27] The appeal does not have a reasonable chance of success based on any ground of appeal.

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<sup>11</sup> General Division decision, at para 18.

**CONCLUSION**

[28] I am satisfied that the appeal has no reasonable chance of success, so the application is refused.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVE:	L. S., self-represented
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