



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. H. v. Canada Employment Insurance Commission*, 2018 SST 1284

Tribunal File Number: AD-18-555

BETWEEN:

M. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: December 11, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, M. H., applied for and received Employment Insurance (EI) benefits while he was attending a full-time course of study. He completed claimant reports that contained discrepancies.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Applicant made false statements in his reports and was not available for work. The Applicant requested a reconsideration. The Commission maintained its initial decision.

[4] The General Division found that the Applicant was not available for work, that he made misrepresentations in his reports, and that the Commission acted in a judicial manner when it imposed a non-monetary penalty (a warning letter).

[5] The Applicant filed the Application with the Appeal Division and submitted that the General Division did not properly evaluate his case. He argues that the General Division's decision was based on important errors in the findings of facts.

[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 disclose any reviewable errors.

ISSUES

[7] For the Application to be considered, an extension of time to apply for leave to appeal must be granted.

[8] Is there an arguable case that the General Division made a serious error in its findings of fact by concluding that the Applicant was not available for work?

ANALYSIS

[9] An applicant must seek leave to appeal in order 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.¹

[10] 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?²

[11] 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.⁴ The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

[12] The Applicant submits that the General Division failed to consider his personal circumstances and failed to assess the responses in his reports fairly. He argues that the General Division decision should be overturned because his answers were truthful and he was available to work around his school hours.

Late Application and Extension of Time

[13] The Applicant was late in filing his Application with the Appeal Division.

[14] The Applicant has not provided an explanation for the delay between the end of the appeal period, May 16, 2018, and October 9, 2018, the date on which he completed the Application.

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

⁴ *Ibid.*, s. 58(1).

[15] It appears that the Applicant attempted to file the Application on August 29, 2018. However, the Application was incomplete. Additional information was filed on October 9, 2018.

[16] In *Canada (Attorney General) v Larkman*,⁵ the Federal Court of Appeal held that, when a decision-maker is determining whether to allow an extension of time, the overriding consideration is that the interests of justice be served.

[17] If the appeal has a reasonable chance of success, then it would serve the interests of justice to grant the extension of time.

[18] Therefore, I will consider whether the appeal has a reasonable chance of success.

Is there an arguable case that the General Division made a serious error in its findings of fact by concluding that the Applicant was not available for work?

[19] I find that there is no arguable case that the General Division made a serious error in its findings of fact.

[20] The General Division considered the evidence in the documentary record. It also considered the testimony that the Applicant and his witness gave during the in-person hearing. The General Division considered the Applicant's explanation for the discrepancies in his reports and his willingness to work around his course schedule. It also fully analyzed the Applicant's submissions.

[21] The General Division correctly noted that there is a legal presumption that a person enrolled in a course of full-time study is not available for work and that this presumption may be rebutted through proof of exceptional circumstances.⁶

[22] The General Division considered the Applicant's circumstances and found that he "failed to present evidence of 'exceptional circumstances' that would rebut the presumption of non-availability while attending a full time course."⁷

⁵ *Canada (Attorney General) v Larkman*, 2012 FCA 204.

⁶ *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

⁷ General Division decision at paras 6 and 37.

[23] In the Application, the Applicant argues that he answered the questions in the reports truthfully, he was ready and willing to work around his class schedule, he tried to obtain employment but was not successful, and his intention in returning to school was to improve his employability. Also, the Applicant submits that the application process and the questions the Tribunal asked in the reports are difficult to understand and led to misunderstanding his situation.

[24] In its decision, the General Division noted the Applicant's submissions before it, which included each of these arguments. In essence, the Applicant seeks to reargue his case based on arguments similar to those he made at the General Division. A simple repetition of his arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

CONCLUSION

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

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	M. H., self-represented
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