



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *G. D. v. Canada Employment Insurance Commission*, 2019 SST 41

Tribunal File Number: AD-19-21

BETWEEN:

**G. D.**

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: Pierre Lafontaine

Date of decision: January 21, 2019

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, G. D. (Claimant), requested a reconsideration of the benefit rate calculation for his Employment Insurance claim effective May 1991.

[3] After his benefit period was established, the Claimant had 30 days to request a reconsideration of the decision concerning his benefit rate. The Claimant requested a reconsideration of this issue on August 30, 2018.

[4] The Commission informed the Claimant that it had considered the reasons he gave to justify his delay in requesting a reconsideration of the decision but determined that the reasons did not meet the requirements of the *Reconsideration Request Regulations*. The Commission informed the Claimant that, as a result, it would not reconsider the decision. The Claimant appealed to the General Division the Commission's decision refusing to extend the 30-day period for requesting a reconsideration.

[5] The General Division determined that the Commission had acted in good faith and had considered all the relevant circumstances in the file, while disregarding irrelevant aspects, when it refused to extend the time for requesting a reconsideration of a decision. The General Division found that the Commission had exercised its discretion judicially when it refused to extend the period for requesting a reconsideration of the decision.

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

[7] In support of his application for leave to appeal, the Claimant repeated the facts about his benefit rate he had presented before the General Division.

[8] The Tribunal sent the Claimant a letter dated January 8, 2019, asking him to explain in detail why he was requesting leave to appeal in accordance with section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). In his response to the Tribunal, the Claimant repeated the facts about his benefit rate.

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

[10] The Tribunal refuses leave to appeal because none of the grounds of appeal the Claimant has raised give the appeal a reasonable chance of success.

### **ISSUE**

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

### **ANALYSIS**

[12] Section 58(1) of the 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 made in a perverse or capricious manner or without regard for the material before it.

[13] 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; he must instead establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, the Claimant must show that there is some reviewable error based on which the appeal might succeed.

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

[15] 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 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 the General Division may have committed?**

[16] The Commission considered that the Claimant had confirmed receipt of its decision dated May 1991 and that he had delayed making a request for reconsideration until August 24, 2018.

[17] In his application for leave to appeal, the Claimant repeated the facts about his benefit rate that he had presented to the General Division.

[18] On January 8, 2019, the Tribunal sent a letter to the Claimant asking him to explain in detail why he was applying for leave to appeal under section 58(1) of the DESD Act. In his response to the Tribunal, the Claimant presented the facts about his benefit rate again.

[19] The Claimant did not submit a request for reconsideration until August 24, 2018, which is more than 27 years after the decision of May 1991. The Claimant knew of the decision's existence because he said he went to the Employment Insurance office twice about the calculation for his file in 1991. The Claimant's reasons for his delay do not explain his 27-year delay.

[20] After reviewing the Applicant's evidence, the General Division determined that the Commission had properly exercised its discretion under section 112 of the *Employment Insurance Act* and the *Reconsideration Request Regulations* when it deemed that the Claimant had not provided a reasonable explanation for filing his request for a reconsideration late and that he had not demonstrated a continuing intention to request a reconsideration.

[21] The General Division determined that the Commission had not acted in bad faith, had given sufficient weight to all relevant factors, and had not considered irrelevant factors.

[22] In his application for leave to appeal, the Claimant has not identified any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified any errors in law or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it when coming to its decision.

[23] For the reasons above, and after reviewing the appeal file, the General Division decision, and the Claimant's arguments in support of his application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

#### **CONCLUSION**

[24] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	G. D., self-represented
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