



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. H. v Canada Employment Insurance Commission*, 2019 SST 32

Tribunal File Number: AD-18-860

BETWEEN:

**J. H.**

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: January 18, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, J. H., applied for and received Employment Insurance (EI) benefits. He filed claimant reports until December 2017, when he was late with two reports covering a four-week period (from December 31, 2017, to January 27, 2018).

[3] He asked the Respondent, the Canada Employment Insurance Commission (Commission), to allow his late reports to be antedated so he could receive EI benefits for the missed weeks. The Commission denied the antedate request because the Applicant did not have good cause for being late with his reports. The Applicant requested a reconsideration. The Commission maintained its initial decision.

[4] The General Division found that the Applicant failed to file his reports for four weeks and that he was three weeks late when he contacted the Commission with his antedate request. Furthermore, the General Division concluded that the Applicant did not have good cause for delay.

[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 its 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 erred in law by applying the wrong standard of proof in weighing the evidence before it?

[9] Is there an arguable case that the General Division made a serious error in its findings of fact by concluding that the Applicant did not have good cause for delay?

## **ANALYSIS**

[10] 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.<sup>1</sup>

[11] 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 on which the proposed appeal might succeed?<sup>2</sup>

[12] 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 the following: 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] The Applicant submits that the General Division failed to consider his personal circumstances and failed to assess the evidence fairly. He argues that the General Division decision should be overturned because the General Division misapplied the standard of proof and misapprehended the facts.

### **Late Application and Extension of Time**

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

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

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

[15] The General Division decision was mailed to the Applicant on August 28, 2018.<sup>5</sup> The Applicant is deemed to have received the decision 10 days after the date that it was mailed, namely by September 7, 2018.

[16] The period within which the Applicant was required to file the Application was 30 days from September 7, 2018, that is October 7, 2018.

[17] It appears that the Applicant contacted the Tribunal on September 26, 2018 saying he wanted to appeal the General Division decision, and the Tribunal sent him the form for the Application at that time.<sup>6</sup> He had the intention to appeal the decision.

[18] The Applicant provided an explanation for the delay between the end of the appeal period, October 7, 2018, and December 17, 2018, the date on which he filed the Application. His explanation was that he did not realize there was a deadline date for appealing and he has had anxiety since his concussion.

[19] In *Canada (Attorney General) v Larkman*,<sup>7</sup> 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.

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

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

**Issue 1: Is there an arguable case that the General Division erred in law by applying the wrong standard of proof in weighing the evidence before it?**

[22] I find that there is no arguable case that the General Division erred in law by misapplying the standard of proof.

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<sup>5</sup> General Division decision cover letter, dated August 28, 2018.

<sup>6</sup> Tribunal Telephone Conversation Log, September 26, 2018.

<sup>7</sup> *Canada (Attorney General) v Larkman*, 2012 FCA 204.

[23] The General Division stated that the onus was on the Applicant to prove that he had good cause for delay throughout the entire period of delay in filing his claim reports.<sup>8</sup> This was a correct statement of the standard of proof.

[24] The General Division did not err in law. It did not apply the wrong standard of proof or misapply the standard of proof.

[25] The appeal has no reasonable chance of success based on this ground.

**Issue 2: Is there an arguable case that the General Division made a serious error in its findings of fact by concluding that the Applicant did not have good cause for delay?**

[26] The General Division considered the evidence in the documentary record. It also considered the testimony that the Applicant gave during the teleconference hearing. The General Division considered the Applicant's explanation for his delay in filing reports, including the medical evidence on file.

[27] The General Division correctly noted that the Applicant must prove that he had good cause for his delay throughout the entire period of the delay and, to show this, he must have acted as a reasonable and prudent person would have acted in the same situation to ensure compliance with their rights and obligations under the *Employment Insurance Act*.<sup>9</sup>

[28] The General Division considered the Applicant's circumstances and found that "a reasonable and prudent person would not have waited three (3) weeks to contact Service Canada and complete their reports and/or obtain clarification on the status of their claim."<sup>10</sup>

[29] In the Application, the Applicant argues that the medical information (confirming that he had suffered a concussion in 2016) should have been dispositive and that too much reliance was placed on certain facts.

[30] In its decision, the General Division noted the Applicant's submissions before it, which included each of these arguments. Essentially, the Applicant seeks to reargue his case based on

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<sup>8</sup> General Division decision at para 25.

<sup>9</sup> *Ibid.* at para 15.

<sup>10</sup> *Ibid.* at paras 16–20.

arguments similar to those he made at the General Division. Simply repeating his arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[31] The appeal has no reasonable chance of success based on this ground.

**CONCLUSION**

[32] I am satisfied that the appeal has no reasonable chance of success, so the extension of time and Application are refused.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVE:	J. H., self-represented
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