



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. K. v Canada Employment Insurance Commission*, 2019 SST 76

Tribunal File Number: AD-18-880

BETWEEN:

A. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 1st, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. K. (Claimant), established an initial claim for Employment Insurance sickness benefits effective December 13, 2015. He did not attempt to file any reports. The Respondent, the Canada Employment Insurance Commission (Commission), told the Claimant that payment of the benefits could not start on December 13, 2015, because he failed to show good cause for not filing reports throughout the entire period of the delay, from December 13, 2015, to March 5, 2018. The Claimant requested reconsideration of the Commission's decision, and the Commission maintained its decision. The Claimant appealed to the General Division of this Tribunal.

[3] The General Division found that the Claimant had not shown good cause for his delay in filing his claimant reports between December 13, 2015 and March 5, 2018. It concluded that a reasonable person would have completed the reports needed to receive benefits or would have contacted the Commission for more information if they were unsure whether ongoing reports were needed.

[4] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division. The Claimant puts forward that he was not given information to access the Service Canada Website.

[5] On January 16, 2019, the Tribunal sent the Claimant a letter requesting a detailed explanation of why he was appealing the General Division's decision. The Claimant put forward that he did not receive the code he needed to access the Service Canada website, so it was difficult for him to complete his reports.

[6] The Tribunal must decide whether the Claimant's appeal has a reasonable chance of success based on a reviewable error that the General Division made.

[7] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error that the General Division made?

ANALYSIS

[9] Section 58(1) of the *Department of Employment and Social Development Act* (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 had made in a perverse or capricious manner or without regard for the material before it.

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

[11] Therefore, before the Tribunal can grant leave, it needs to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[12] 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 a question of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the General Division decision under review.

Issue: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error that the General Division made?

[13] In support of his application for leave to appeal, the Claimant basically repeats the facts that he already submitted to the General Division. He puts forward that he did not receive the code he needed to access the Service Canada website, so it was difficult for him to complete his reports, even though funds were not sent to him after the Commission's approval.

[14] The General Division concluded that the Claimant had not shown good cause for his delay in filing his claimant reports between December 13, 2015 and March 5, 2018.

[15] The General Division found that the Claimant attested to reading and accepting the sickness benefits conditions, including the requirement to file reports. It determined that a reasonable person would have completed the reports needed to receive benefits or would have contacted the Commission for more information if they were unsure whether ongoing reports were needed.

[16] The General Division also found that while the Claimant may have suffered from health issues, those issues did not prevent him from returning to work on two occasions: in September 2016 and September 2017. It determined that a reasonable person would have immediately contacted the Commission in September 2016 after learning that sickness benefits had never been paid during the December 2015 to September 2016 period, which the Claimant did not do.

[17] The General Division further found that a prudent and reasonable person would have used the period of good health to put his Employment Insurance affairs in order by contacting the Commission to sort out his Employment Insurance payments. While the Claimant may have had periods of incapacitation, the documentary evidence does not support incapacitation for the entire period of the delay of 27 months in filing the Claimant's reports.

[18] Unfortunately for the Claimant, an appeal to the Appeal Division of the Tribunal is not a new hearing, where a party can represent its evidence and hope for a new favorable outcome.

[19] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact which

the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[20] In light of the General Division conclusion described above and the undisputed facts in support of its conclusion, the Tribunal is not convinced that the appeal has a reasonable chance of success. The Claimant has not set out a reason that falls into the grounds of appeal listed above and that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	A. K., self-represented
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