



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. K. v Canada Employment Insurance Commission*, 2019 SST 79

Tribunal File Number: AD-19-36

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), applied for 17 weeks of Employment Insurance parental benefits on March 4, 2018, stating that he left his employment on March 2, 2018, to care for his child who was born on March X, 2017. The Respondent, the Canada Employment Insurance Commission (Commission), determined that it could not pay the benefits because the Claimant had applied for benefits outside the 52-week period available for Employment Insurance parental benefits.

[3] The Claimant requested a reconsideration of the Commission's initial decision, asking for his claim to be allowed on compassionate grounds and adding that his child had been hospitalized for a total of three weeks during the 52-week period after the child's birth. The Commission modified its initial decision and extended the Claimant's parental benefit period by three weeks because the Claimant's child had been hospitalized; this allowed the Claimant to receive two weeks of parental benefits after the one-week waiting period. The Claimant appealed to the General Division of the Tribunal asking for the full 17 weeks of benefits on compassionate grounds.

[4] The General Division found that the Claimant was entitled to three weeks of parental benefits and that he had received his full entitlement to parental benefits under sections 23(2) and 23(3) of the *Employment Insurance Act* (EI Act).

[5] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division.

[6] On January 21, 2019, the Tribunal sent the Claimant a letter requesting that he explain in detail why he was appealing the General Division decision. The Claimant puts forward that he was not given a fair hearing. He submits that the General Division did not consider that his

wife's illness prevented her from taking care of their son. The Claimant puts forward that the General Division passed judgement before the hearing took place.

[7] The Tribunal must decide whether the Claimant raised some reviewable error of the General Division on which the appeal might arguably succeed.

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

ISSUE

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

ANALYSIS

[10] 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 made in a perverse or capricious manner or without regard for the material before it.

[11] 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 but 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.

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

[13] 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 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?

[14] In support of his application for leave to appeal, the Claimant puts forward that he was not given a fair hearing. He submits that the General Division did not consider that his wife's illness prevented her from taking care of their son. The Claimant puts forward that the General Division passed judgement before the hearing took place.

[15] The General Division found that the Claimant was entitled to three weeks of parental benefits and that he had received his full entitlement to parental benefits under sections 23(2) and 23(3) of the EI Act.

[16] The undisputed evidence before the General Division shows that the Claimant applied for 17 weeks of Employment Insurance parental benefits on March 4, 2018, stating that he left his employment on March 2, 2018, to care for his child who was born on March X, 2017. The Claimant did not apply for benefits sooner because his wife was the child's primary caregiver until she became ill.

[17] Under section 23(2) of the EI Act, the Claimant was entitled to benefits for each week of unemployment in the period that began the week his child was born and ended 52 weeks after the week his child was born.

[18] The Claimant's child was born on March X, 2017, and the Claimant requested the standard parental benefits effective March 4, 2018, which was more than 52 weeks after the week the Claimant's child was born. The Claimant was, however, granted an extension of three weeks under section 23(3) of the EI Act because his child was hospitalized for three weeks.

[19] In light of the General Division's conclusion 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 within the grounds of appeal mentioned above and that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	A. K., self-represented
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