Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *P. Z. v Canada Employment Insurance Commission*, 2019 SST 134

Tribunal File Number: AD-19-18

BETWEEN:

P. Z.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 14, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, P. Z. (Claimant), made an initial claim for Employment Insurance benefits. After reviewing the Claimant's claim for benefits, the Respondent, the Canada Employment Insurance Commission [(Commission)], determined that the Claimant had delayed in submitting his initial claim. The Commission granted Employment Insurance benefits as of December 31, 2017, under section 10(1)(b) of the *Employment Insurance Act* (EI Act). The Claimant asked for his Employment Insurance benefits to be antedated to start on December 3 or 10, 2017. The Commission reconsidered the Claimant's file and maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division determined that the Claimant's initial claim was late. It found that the Claimant had not shown that he had just cause for the delay in making his initial claim.

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

[5] In support of his application for leave to appeal, the Claimant argued that the General Division made an error in law by finding that section 26 of the *Employment Insurance Regulations* (EI Regulations) did not apply to the initial claim.

[6] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error that may give the appeal a reasonable chance of success.

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

ISSUE

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

ANALYSIS

[9] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the only grounds of appeal for a General Division decision 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.

[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; 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 arguably some reviewable error based on which the appeal might succeed.

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal that the Claimant has raised 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 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 the General Division may have made?

[13] In support of his application for leave to appeal, the Claimant argued that the General Division made an error in law by finding that section 26 of the EI Regulations did not apply to an initial claim.

[14] The Claimant argued before the General Division, based on section 50(4) of the EI Act, that a claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time in the EI Regulations.

[15] According to the Claimant, section 26(1) of the EI Regulations enables him to submit his claim within three weeks after the week for which he is claiming benefits. He maintained that, since his benefits start as of December 10, 2017, the three weeks must be calculated as of December 17, 2017 (the week following the week for which a claimant claims benefits). He therefore claims that he acted within the three weeks stated in section 26 of the EI Regulations, and that his claim is therefore in compliance with the requirements imposed by the EI Act for promptly claiming benefits.

[16] The General Division did not accept the Claimant's argument. It found that, in the case of an initial claim for benefits, it was appropriate to apply sections 10(1) and (4) of the EI Act, not section 26 of the EI Regulations. The General Division found that the rules stated in section 26 of the EI Regulations applied to claims for benefits for a week of unemployment in a benefit period and not to initial claims for benefits.

[17] The Federal Court of Appeal has confirmed the General Division's interpretation of section 26 of the EI Regulations.[1] The Court instructs that section 50(4) of the EI Regulations concerns a weekly claim for benefits, meaning a [translation] "continuing claim" or a [translation] "renewed claim," and that the time limits are stated in section 26 of the EI Regulations. The Court notes that there is no mention of an initial claim because the time to file an initial claim is already stated in sections 10(1) and 10(4) of the EI Act.

[18] The General Division therefore did not make an error in law in its interpretation of section 26 of the EI Regulations.

[19] For the reasons above and after reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no choice but to find that the appeal has no reasonable chance of success. The Claimant has not raised any

[1] *Her Majesty the Queen v Bruce Harbour*, A-541-85.

issues of law, fact, or jurisdiction that might lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	Andrey Mutchnik, Representative for the Applicant