



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. P. v Canada Employment Insurance Commission*, 2019 SST 175

Tribunal File Number: AD-19-160

BETWEEN:

B. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 7, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, B. P. (Claimant), applied for and received Employment Insurance benefits. He later received a monetary penalty and a notice of violation for knowingly making false statements. The Claimant requested a reconsideration but did not do this in time. The Respondent, the Canada Employment Insurance Commission (Commission), denied the Claimant's request for an extension to file his request for reconsideration. The Claimant appealed that decision to the Social Security Tribunal more than one year after the day on which the Commission's reconsideration decision was communicated to him.

[3] The General Division applied section 52(2) of the *Department of Employment and Social Development Act* (DESD Act), which states that in no case may an appeal be brought more than one year after the reconsideration decision is communicated to a claimant. It concluded that the Claimant did not file his appeal on time and, therefore, the appeal could not move forward.

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

[5] In support of his application for leave to appeal, the Claimant puts forward that he did not know about the Tribunal, so he filed several appeals with the Commission. He argues that he never received any decisions from the Commission, only a phone call advising him that his request for reconsideration was denied. He would like his appeal to be reconsidered.

[6] The Tribunal must decide whether there is arguably some reviewable error of the General Division on which the appeal might succeed.

[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 may have made?

ANALYSIS

[9] 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.

[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 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.

[11] Therefore, before the Tribunal can grant leave, it must be satisfied that the reasons for appeal fall within any of the grounds of appeal mentioned above 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 an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the General Division decision under review.

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

[13] In support of his application for leave to appeal, the Claimant puts forward that he did not know about the Tribunal, so he filed several appeals with the Commission. He argues that he

never received any decisions from the Commission, only a phone call advising him that his request for reconsideration was denied. He would like his appeal to be reconsidered.

[14] The undisputed evidence before the General Division shows that more than one year had passed between the Commission denying the Claimant's request and the Claimant filing his appeal with the General Division. The Commission communicated its decision to the Claimant on June 23, 2017, and the Claimant did not file his appeal with the General Division until January 14, 2019.

[15] Section 52(2) of the DESD Act clearly states that in no case may an appeal be filed with the General Division more than one year after the day on which the Commission's decision is communicated to the claimant.

[16] Furthermore, section 52(2) of the DESD Act does not allow any discretion to the Tribunal to extend further than one year the delay to appeal to the General Division.

[17] Unfortunately for the Claimant, he has not identified any errors of jurisdiction or 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 in deciding to apply section 52(2) of the DESD Act.

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

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	B. P., self-represented
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