



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. L. v Canada Employment Insurance Commission*, 2019 SST 332

Tribunal File Number: AD-19-74

BETWEEN:

H. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 5, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal.

OVERVIEW

[2] The Applicant, H. L. (Claimant) was employed and retired from his employment on February 9, 2017. He received a \$28,000.00 retirement allowance from his employer, which was paid to him on a bi-weekly basis. The Claimant applied for employment insurance regular benefits on June 17, 2018. He requested to antedate his claim to his last day of work on February 9, 2017. The Claimant stated that he delayed his application for benefits because he thought that he had to wait to until his retirement package was exhausted. He also stated that he forgot about applying after his retirement package was exhausted and that he was out of the country for a few months.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), denied the Claimant's request to antedate his claim. It determined that he did not have good cause because he did not act as a reasonable and prudent person would have done in similar circumstances. The Commission also determined that a benefit period could not be established because the Claimant did not have sufficient hours of insurable employment during the qualifying period. The Claimant appealed this decision to the General Division.

[4] The General Division found that the Claimant did not prove good cause because he did not act a reasonable and prudent person in similar circumstances for the entire delay period.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. In his application for leave to appeal, the Claimant reiterated his testimony before the General Division.

[6] On February 27, 2019, the Tribunal sent a letter to the Claimant requesting that he explain in detail why he was appealing the decision of the General Division. In his reply,

the Claimant puts forward that he recognizes it was his fault for not applying sooner. He submits that it was an honest mistake on his part. He worked for his employer for many years and he simply did not know or understand the process. He would like his case to be reconsidered.

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

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

ISSUE

[9] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

ANALYSIS

[10] 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; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

[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, that there is arguably some reviewable error upon which the appeal might succeed.

[12] Therefore, before leave can be granted, the Tribunal 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.

[13] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of natural justice, jurisdiction, law, or fact, the answer to which may lead to the setting aside of the General Division decision under review.

Issue: Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[14] In support of his application for leave to appeal, the Claimant puts forward that knows it was his fault for not applying sooner. He submits that it was an honest mistake on his part. He worked for his employer for many years and he simply did not know or understand the process. He would like his case to be reconsidered.

[15] The General Division found that the Claimant did not prove good cause because he did not act a reasonable and prudent person in similar circumstances for the entire delay period. It found that a reasonable and prudent person in the Claimant's circumstances would have made inquiries with the Commission about his rights and obligations to verify the impact of his retirement payments from his employer.

[16] The Federal Court of Appeal has established that a claimant as an obligation to make prompt inquiries with the Commission to verify personal assumptions.¹ The Federal Court of Appeal has also established that ignorance of the process does not constitute good cause under the EI Act.²

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

¹ *Canada (Attorney General) v Innes*, 2011 FCA 341, *Canada (Attorney General) v Trinh*, 2010 FCA 335, *Howard v Canada (Attorney General)*, 2011 FCA 116, *Shebib v Canada (Attorney General)*, 2003 FCA 88.

² *Canada (Attorney General) v Persiiantsev*, 2010 FCA 101.

CONCLUSION

[18] The Tribunal refuses leave to appeal.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	H. L., Self-represented
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