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

Citation: *S. R. v Canada Employment Insurance Commission*, 2019 SST 321

Tribunal File Number: AD-19-110

BETWEEN:

S. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time by: Jude Samson

Date of Decision: April 2, 2019

Canada

DECISION AND REASONS

DECISION

[1] The applications for an extension of time to apply for leave to appeal and for leave to appeal are both refused.

OVERVIEW

[2] S. R. is the Claimant in this case. In March 2018, he decided not to return to his job driving a bus in northern Alberta. Instead, he applied for regular Employment Insurance (EI) benefits, but the Canada Employment Insurance Commission (Commission) concluded that he was disqualified from receiving those benefits because he had voluntarily quit his job without just cause, as defined under the *Employment Insurance Act* (EI Act).

[3] In short, the Claimant argued that he had a variety of good reasons for not returning to his job, including harassment in the workplace, unsafe working conditions, and a belief that he had found work closer to his home.

[4] The Claimant challenged the Commission's decision, but the Commission maintained it on reconsideration. The Claimant then challenged the Commission's reconsideration decision to the Tribunal's General Division, but the General Division dismissed his appeal.

[5] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division, but he has two preliminary hurdles to overcome before the file can move forward. First, because the Claimant's request for leave to appeal was filed after the 30-day deadline had expired, he needs an extension of time. Second, like most appeals before the Tribunal's Appeal Division, he also needs leave (or permission) to appeal.

[6] In my view, the claimant has not overcome either of these preliminary hurdles. These are the reasons for my decision.

ISSUES

[7] In reaching this decision, I focused on the following issues:

a) Was the Claimant's request for leave to appeal filed late?

b) Should the Claimant be given an extension of time to request leave to appeal?

c) Should the Claimant be granted leave to appeal?

ANALYSIS

Issue 1: Was the Claimant's request for leave to appeal filed late?

[8] Yes, the Claimant was late filing his request for leave to appeal.

[9] Applications requesting leave to appeal are due within 30 days of when claimants receive the General Division decision, but the Appeal Division can allow extensions of time so long as the application is filed less than a year late.[1]

[10] In this case, the cover letter that the Tribunal sent with the General Division decision is dated September 18, 2018. This letter clearly explained to the Claimant that his request for leave to appeal, should he wish to file one, was due within 30 days.

[11] Although the Claimant was asked, he did not specify when he received the General Division decision.[2] Nevertheless, I am able to assume that the Claimant received the General Division decision 10 days after the Tribunal sent it to him.[3] As a result, his request for leave to appeal was due on October 29, 2018.

[12] Instead, however, the Claimant first contacted the Tribunal on February 4, 2019, to request the form to apply for leave to appeal, and the Tribunal received his completed application the next day.[4]

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[1] *Department of Employment and Social Development Act* (DESD Act), ss 57(1)(a) and 57(2).
[2] See the Tribunal's letter dated February 12, 2019.
[3] *Social Security Tribunal Regulations*, s 19(1)(a).
[4] AD1.

[13] As a result, the Claimant missed the deadline for filing his application requesting leave to appeal, though an extension of time is possible in this case.

Issue 2: Should the Claimant be given an extension of time to request leave to appeal?

[14] No, the Claimant has not met the legal test for obtaining an extension of time.

[15] When deciding this issue, I considered and weighed the following four factors:[5]

a) Has the Claimant shown a continuing intention to pursue his appeal?

b) Has he provided a reasonable explanation for the delay?

c) Would any other party be prejudiced by the granting of the extension?

d) Is there an arguable case on appeal?

[16] Not all four factors need to be met; the overriding consideration is that the interests of justice be served.[6]

[17] In a letter dated February 12, 2019, the Tribunal asked the Claimant to address these four factors, but the Claimant did not respond to the Tribunal's letter. Indeed, in a phone conversation with Tribunal staff on April 1, 2019, the Claimant confirmed that he had nothing more to add to his file.

A continuing intention to pursue the appeal

[18] There is no evidence that the Claimant demonstrated an intention of appealing the General Division decision until February 4, 2019, when he contacted the Tribunal to request the form to apply for leave to appeal. By that time, however, the deadline for bringing an appeal had already expired. In my view, this factor has not been met.

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[5] *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 883.
[6] *Canada (Attorney General) v Larkman*, 2012 FCA 204.

A reasonable explanation for the delay

[19] The Claimant explained that he did not appeal the General Division decision earlier because he had friends who had been through a similar situation, and so he wanted to give some serious thought to the question of bringing a further appeal. This is not, in my view, a reasonable explanation for the delay in this case.

Prejudice to another party

[20] Given the Commission's resources and the availability of relevant documents, there is no obvious reason why the Commission's ability to respond to the appeal would be unduly affected by allowing the extension of time.

Arguable case

[21] In my view, the Claimant does not have an arguable case on appeal.

[22] At the Appeal Division, the focus is on whether the General Division might have committed one or more of the recognized errors (grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act*. As a result, the Appeal Division can intervene in a case only if the General Division:

a) breached a principle of natural justice or made an error relating to its jurisdiction;

b) rendered a decision that contains an error of law; or

c) 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.

[23] In this particular case, the General Division focused on sections 29 and 30 of the EI Act, which disqualify claimants from receiving EI benefits if they voluntarily leave a job without just cause. In its decision, therefore, the General Division asked and answered two main questions: Did the Claimant voluntarily leave his employment, and, if so, did he have just cause for doing so? The General Division answered yes to the first question and no to the second one.

[24] For the first question, it seems undisputed that the Claimant left his job in March 2018, and that he could have returned to his job if he had wanted to do so.[7]

[25] Concerning the second question, the Claimant argues that he could not return to his job because of a confrontation that he had had with another driver and because he thought it likely that he would be hired by a different company. But these are arguments that the General Division has already considered.[8] The General Division concluded that neither of these explanations amounted to just cause within the meaning of the EI Act.

[26] In addition, the Claimant now seems to be arguing that there were medical reasons why he could not return to work in March 2018, but he has not pointed to any evidence supporting this argument that the General Division might have ignored or misinterpreted and it is too late to add new evidence to the file now. I cannot fault the General Division for failing to consider arguments that the Claimant never put before it.

[27] Overall, therefore, I find that the Claimant's arguments largely repeat points that the General Division has already considered. The Appeal Division has no power to intervene in a case simply because the Claimant would like certain factors to be weighed differently.[9] The Appeal Division's role is limited: it is not a place for the Claimant to reargue his case in hopes of getting a different result.[10] In addition, the Appeal Division has no power to intervene just because the Claimant disagrees with the way that the General Division applied established legal principles to the facts of his case.[11]

[28] While the arguments the Claimant is advancing in his request for leave to appeal do not fit comfortably within the Appeal Division's legal framework, I am nevertheless mindful of Federal Court decisions in which the Appeal Division has been warned against reviewing requests for leave to appeal in an overly strict way. Instead, the Appeal Division should review

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[7] General Division decision at paras 8–11.
[8] General Division decision at paras 16–20 and 22.
[9] DESD Act, s 58(1).
[10] *Bellefeuille v Canada (Attorney General)*, 2014 FC 963 at para 31; *Rouleau v Canada (Attorney General)*, 2017 FC 534 at para 42.
[11] *Quadir v Canada (Attorney General)*, 2018 FCA 21 at para 9; *Garvey v Canada (Attorney General)*, 2018 FCA 118 at para 7.

the underlying record to determine whether the General Division misinterpreted or failed to properly consider any of the evidence.[12]

[29] After reviewing the documentary record and examining the decision under appeal, I am satisfied that the General Division neither misinterpreted nor failed to properly consider any relevant evidence.

[30] For all of these reasons, I find that the Claimant does not have an arguable case on appeal.

Conclusion on the extension of time

[31] Though the factors above lean towards refusing the Claimant's request for an extension of time, I have also made an overall assessment of what the interests of justice might require. In this respect, I acknowledge that the refusal to grant an extension of time means that the Claimant's appeal ends here, but I must weigh that against the extent to which the interests of justice would be served by allowing an appeal to proceed even though it has no reasonable chance of success.

[32] I am aware of cases in which the Federal Court and Federal Court of Appeal have given particular weight to the arguable case factor, and I find that that factor is entitled to significant weight in this case too.[13]

[33] Having considered the four factors above and the interests of justice, I have decided that the extension of time needed to request leave to appeal should be refused.

Issue 3: Should the Claimant be granted leave to appeal?

[34] No, leave to appeal should be refused in this case.

[35] Leave to appeal is granted unless the appeal has "no reasonable chance of success."[14]

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[12] *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.
[13] *McCann v Canada (Attorney General)*, 2016 FC 878; *Maqsood v Canada (Attorney General)*, 2011 FCA 309.
[14] DESD Act, ss 58(2) and 58(3).

[36] While this legal test is different from the one discussed above—whether the Claimant has "an arguable case on appeal"—the courts have interpreted the two tests as being essentially the same.[15] In both cases, the threshold is a low one: Is there any arguable ground on which the appeal might succeed?

[37] As a result, since I have already concluded that there is no arguable case on appeal, I can also conclude that the appeal has no reasonable chance of success, and that leave to appeal must be refused.

CONCLUSION

[38] The Claimant requires an extension of time and leave to appeal for this matter to move forward. Although I sympathize with the Claimant's circumstances, I have concluded that I must refuse his requests for an extension of time and for leave to appeal.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	S. R., self-represented

[15] *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16; *Fancy v Canada (Attorney General)*, 2010 FCA 63.