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

[TRANSLATION]

Citation: *F. M. v Canada Employment Insurance Commission and X*, 2019 SST 348

Tribunal File Number: AD-19-209

BETWEEN:

**F. M.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

and

**X**

Added Party

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# SOCIAL SECURITY TRIBUNAL DECISION
## Appeal Division

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 8, 2019

Canada

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, F. M. (Claimant), made a claim for Employment Insurance benefits. The Canada Employment Insurance Commission (Commission) determined that the Claimant was not entitled to benefits because he had stopped working for X due to his misconduct. The Claimant requested a reconsideration of the decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] On September 2, 2014, the General Division determined that the Claimant had lost his employment because of his misconduct within the meaning of sections 29 and 30 of the *Employment Insurance Act*.

[4] On January 17, 2019, the Claimant filed an application to rescind or amend the General Division decision based on a new or material fact. In support of his application, the Claimant provided a memorandum of understanding between the employer and him that was signed on June 8, 2016.

[5] On February 28, 2019, the General Division dismissed the application to rescind or amend the September 2, 2014, decision.

[6] The Claimant is now seeking leave from the Tribunal to appeal the General Division decision on the application to rescind or amend.

[7] In support of his application for leave to appeal, the Claimant argues that he could not apply to rescind or amend the General Division decision before he knew the outcome of his grievance. He argues that he did not lose his employment because of misconduct and that he is entitled to Employment Insurance benefits.

[8] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[9] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

**ISSUE**

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

**ANALYSIS**

[11] 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.

[12] An application for leave to appeal is a preliminary step to a hearing on the merits of the case. 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; instead, he must establish that his appeal has a reasonable chance of success. In other words, he must establish that there is arguably some reviewable error based on which the appeal might succeed.

[13] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal has a reasonable chance of success.

[14] 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 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?**

[15] In support of his application for leave to appeal, the Claimant argues that he could not apply to rescind or amend the General Division decision before he knew the outcome of his grievance. He argues that it has now been established that he did not lose his employment because of misconduct, and that he is entitled to Employment Insurance benefits.

[16] The Claimant filed his application to rescind or amend the General Division decision on January 17, 2019. In support of his application, the Claimant provided a memorandum of understanding between the employer and him that was signed on June 8, 2016.

[17] The General Division decision is deemed to have been communicated to the Claimant 10 days after the day the decision was mailed because it was sent to him by regular mail.[1] The General Division rendered its decision on September 2, 2014, and the decision was mailed to him on September 3, 2014. The Claimant is therefore deemed to have received the General Division decision on September 13, 2014.

[18] As the General Division noted, the Claimant has not changed his address since then, and no mail concerning the September 2, 2014, decision was returned.

[19] On appeal, the Claimant does not dispute the fact that the decision was communicated to him in 2014. His only argument is that he could not file his application to rescind or amend the General Division decision before he knew the outcome of his grievance—an outcome he has known, however, since June 8, 2016.

[20] Section 66 of the DESD Act provides that an application to rescind or amend a decision must be made within one year after the day on which a decision is communicated to a claimant. The DESD Act does not allow any discrepancy and gives the Tribunal no discretion.

[21] As the General Division decided, the application to rescind or amend cannot be accepted because it was filed more than one year after the date on which the decision was communicated

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[1] *Social Security Tribunal Regulations*, s 19(1)(a).

to the Claimant. In fact, the application to rescind or amend was filed more than four years after the General Division decision was communicated to the Claimant.

[22] The Tribunal notes that, in his application for leave to appeal, the Claimant does not raise any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

[23] After reviewing the appeal file, the General Division decision, and the Claimant's arguments, the Tribunal finds that the General Division considered the material before it and properly applied the DESD Act. The Tribunal has no choice but to find that the Claimant's appeal has no reasonable chance of success.

**CONCLUSION**

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

Pierre Lafontaine
Member, Appeal Division

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| REPRESENTATIVE: | F. M., self-represented |