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

Citation: *G. M. v Canada Employment Insurance Commission*, 2019 SST 352

Tribunal File Number: AD-19-222

BETWEEN:

G. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 9, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, G. M. (Claimant) left her employment at a X to begin a full-time education program to become a X. Her last day of employment was August 21, 2017. She applied for Employment Insurance (EI) regular benefits on September 12, 2018, and filed a request to antedate her claim to August 22, 2017, on that same date. The Respondent, the Canada Employment Insurance Commission (Commission) antedated the Claimant's claim to December 30, 2017, but refused to antedate it back to August 22, 2017. The Commission determined the Claimant had shown good cause for the delay for the period from December 31, 2017 to September 12, 2018, but not for the period from August 22, 2017 to December 30, 2017. The Commission maintained its initial decision after reconsideration. The Claimant appealed to the General Division.

[3] The General Division found that the Claimant did not show good cause for the delay between August 22, 2017 and December 30, 2017. It found that the Claimant did not intend to apply for EI benefits until January 2018 and made no enquiries of the Commission during that period as she was focusing on her schooling and was being supported by her parents. The General Division found that the Claimant made a personal choice to delay in applying for benefits, not realizing it could affect her potential entitlement to benefits. It concluded that the Claimant did not prove good cause because she did not act a reasonable and prudent person in similar circumstances for the entire delay period.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. In her application for leave to appeal, the Claimant puts forward that she delayed her application for benefits until the summer of 2018 because of the false information provided by her coordinator. She also has emails that confirm she was

requesting her record of employment from the employer. She would like her case to be reconsidered by the Appeal Division.

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

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

ISSUE

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

ANALYSIS

[8] 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.

[9] 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 her 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.

[10] 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.

[11] 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?

[12] In support of her application for leave to appeal, the Claimant puts forward that she delayed her application for benefits until the summer of 2018 because of the false information provided in January 2018 by her coordinator. She also has emails that confirm she was requesting her record of employment from the employer. She would like her case to be reconsidered by the Appeal Division.

[13] In this case, the General Division had to decide whether the Claimant had proven good cause for the delay throughout the entire period from August 22, 2017, to September 12, 2018, when her initial claim was made.

[14] The General Division found that the Claimant did not show good cause for the delay between August 22, 2017 and December 30, 2017. It found that the Claimant did not intend to apply for EI benefits until January 2018 when she met her coordinator and made no enquiries of the Commission during the period between August 22, 2017 and December 30, 2017, as she was focusing on her schooling and was being supported by her parents.

[15] As stated by the General Division, the Federal Court of Appeal has found that a good faith reliance on one's own resources does not constitute good cause for the delay.[1] A reasonable person in the Claimant's situation would have contacted the Commission to enquire about her benefit entitlement or informed herself about EI benefits promptly after her work ended on August 21, 2017. Regrettably, the Claimant did not take any steps to enquire into her rights until January 2018, when her parents could no longer support her.

[1] *Howard v Canada (Attorney General)*, A-283-10.

[16] The Federal Court of Appeal has also found that claimants delaying in applying for benefits because their employer failed to issue, or delayed issuing, a record of employment was not good cause for the delay 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.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	G. M. , Self-represented

[2] *Canada (Attorney general.) v Chan*, A-185-94; *Canada (Attorney general.) v Brace*, A-481-07.