



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. B. v Canada Employment Insurance Commission*, 2019 SST 397

Tribunal File Number: AD-19-199

BETWEEN:

N. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 1, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, N. B. (Claimant) established a claim for regular Employment Insurance benefits (EI benefits) as of February 26, 2017. A disqualification was initially imposed on her claim, but was removed upon reconsideration by the Canada Employment Insurance Commission (Commission). On May 30, 2017, bi-weekly reports were processed to allow the Claimant to claim EI benefits for the period March 5, 2017 to April 22, 2017. Her next claim report was due by June 24, 2017, but she submitted no further claim reports.

[3] On September 18, 2018, the Claimant asked the Commission to allow late reports to be antedated so she could receive EI benefits from April 23, 2017 to the end of her claim on February 24, 2018. She attributed her 15-month delay in filing her claim reports to depression caused by the loss of her job and having to move in with her parents. The Commission denied the Claimant's antedate request because she did not have good cause for being late with her claim reports. The Claimant appealed to the General Division of the Tribunal.

[4] The General Division found that the Claimant had failed to meet the onus on her to prove she had good cause for the entire 15 months period of delay in filing her claim reports and, therefore, her reports could not be antedated pursuant to subsection 10(5) of the *Employment Insurance Act* (EI Act).

[5] 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 essentially reiterates her submissions presented to the General Division.

[6] On March 25, 2019, the Tribunal sent a letter to the Claimant requesting that she explain in detail why he was appealing the decision of the General Division. In her reply,

the Claimant puts forward that the General Division failed to understand her circumstances due to the needs and events that occurred in her life in time of her unemployment and reports to be done.

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

[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 arguably succeed?

[14] In support of her application for leave to appeal, the Claimant puts forward that the General Division failed to understand her circumstances due to the needs and events that occurred in her life in time of her unemployment and reports to be done.

[15] The General Division acknowledged that the Claimant went through a difficult time after losing her job on February 28, 2017. However, it found that there was no medical evidence to support her position that she was unable to manager her life because of medical issues for the entire 15 month period of her delay.

[16] The General Division found that although the Claimant stated that she immediately fell into a deep depression upon moving back in with her parents in the first week of March, 2017, she was able to understand that a disqualification was imposed on the claim she filed on February 28, 2017, take steps to submit a request for reconsideration of the disqualification decision, visit her local MP's office and otherwise participate in the reconsideration process, and go on-line to file a claim report on April 9, 2017.

[17] The General Division also noted that the Claimant was able to travel outside of Canada between March 26, 2017 and April 8, 2017, while she was allegedly in a deep depression.

[18] The General Division found that the Claimant did not prove good cause because she did not act as 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 not have waited 15 months to contact Service Canada and complete

their reports or obtain clarification on the status of their claim or ask for information about what steps needed to be taken to receive EI benefits.

[19] The Claimant, in her leave to appeal application, would essentially like to represent her case to the Appeal Division. Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing, where a party can represent its evidence and hope for a new favorable outcome.

[20] In light of the above conclusion of the General Division, and the evidence 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

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	N. B., Self-represented
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