



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. H. v Canada Employment Insurance Commission*, 2019 SST 441

Tribunal File Number: AD-19-242

BETWEEN:

J. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 10, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. H. (Claimant) filed a renewal claim for employment insurance benefits. The Claimant submitted his application for the above claim indicating that he worked from January 8, 2018, until he voluntarily left his position on May 23, 2018, to open up his own business, X. The Canada Employment Insurance Commission (Commission) imposed an indefinite disentitlement to benefits as of May 27, 2018 because it determined that his involvement in his business was not minor in extent. As a result, he did not prove that he was unemployed for a full working week.

[3] The Claimant requested that the Commission reconsider its decision arguing that there was a “misunderstanding” with respect to his employment status. He stated that Service Canada was of the belief that he was self-employed, which was not the case. He stressed that the business never started. The Commission maintained that the Claimant did not provide sufficient evidence to show that he was engaged in his self-employment to a minor extent or that he was looking for other work. The Claimant disagreed and appealed to the General Division of the Tribunal.

[4] The General Division determined that the application of the six objective factors mentioned in section 30(3) of the *Employment Insurance Regulations* (EI Regulations), to the circumstances of the case, lead to the conclusion that the Claimant’s involvement in his business from May 27, 2018, onward was not minor in extent. It found that the Claimant was self-employed and regarded as working a full working week. The General Division concluded that the Claimant was to be disentitled to benefits from that date.

[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 essentially repeats the testimony he gave before the General Division.

[6] On April 16, 2019, a letter was sent to the Claimant requesting that he submit his grounds of appeal. The letter mentioned that it was insufficient to repeat what he had said to the General Division. In his answer to the Tribunal, the Claimant reiterated his initial arguments and filed evidence of employment search.

[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 *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; 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 succeed?

[14] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. In his application for leave to appeal, the Claimant essentially repeats his testimony before the General Division. He wants to introduce evidence to support his position that he was looking for employment and not operating a business as he initially stated to the Commission.

[15] In order to decide leave to appeal, the Appeal Division will not consider the Claimant's new evidence filed in support of his application for leave to appeal. It is well-established case law that the Appeal Division does not consider new facts since its powers are limited by section 58(1) of the DESD Act. The appropriate procedure to present new facts is to proceed to file an application to rescind or amend the General Division decision under section 66 of the DESD Act.

[16] The General Division determined that the application of the six objective factors mentioned in section 30(3) of the EI Regulations, to the circumstances of the case, lead to the conclusion that the Claimant's involvement in his business from May 27, 2018 onward was not minor in extent. It found that the Claimant was self-employed and regarded as working a full working week.

[17] The General Division placed more weight on the Claimant's initial statements to the Commission than on his contrary testimony after the reconsideration decision and at

the hearing. The General Division therefore concluded that the Claimant was to be disentitled to benefits from that date.

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

[19] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[20] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, The Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. H., self-represented
-----------------	-------------------------