



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. N. v Canada Employment Insurance Commission*, 2019 SST 448

Tribunal File Number: AD-18-490

BETWEEN:

K. N.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 14, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, K. N. (Claimant), applied for regular Employment Insurance (EI) benefits on January 9, 2018. The Claimant's last day working for the employer was January 22, 2016. The Claimant's Record of Employment indicates he accumulated 1,988 hours of insurable employment up to January 22, 2016. The Respondent, the *Canada Employment Insurance Commission* (Commission) determined that the Claimant did not qualify for EI benefits, because he had insufficient hours of insurable employment to establish a claim in his qualifying period from January 8, 2017, to January 6, 2018.

[3] The Claimant requested that his claim be antedated to January 24, 2016 but the Commission maintained its initial decision that the Claimant did not qualify for regular EI benefits. The Claimant appealed the Commission decision to the General Division of the Tribunal.

[4] The General Division found that the Claimant had good cause for his delay throughout the period from January 24, 2016, to January 9, 2018. It further found that the Claimant qualified for EI benefits on the earlier date of January 24, 2016.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He argues that the General Division erred in dismissing his appeal since it concluded that he had good cause for his delay throughout the entire period from January 24, 2016, to January 9, 2018, and that he qualified for benefits on the earlier date of January 24, 2016. He argues that his Record of Employment indicates that he accumulated 1,988 hours of insurable employment up to January 22, 2016.

[6] The Tribunal must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

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

ISSUE

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

ANALYSIS

[9] 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.

[10] 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.

[11] 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.

[12] 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?

[13] The General Division found that the Claimant had good cause for his delay throughout the period from January 24, 2016, to January 9, 2018. It further found that the Claimant qualified for EI benefits on the earlier date of January 24, 2016. The General Division allowed the appeal of the Claimant on the issue of antedate.

[14] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. However, he succeeded in his appeal to the General Division. He demonstrated that he qualified at the earlier date and showed, to the satisfaction of the General Division, that he had good cause for the entire period of the delay in making his claim pursuant to section 10 (4) of the *Employment Insurance Act*.

CONCLUSION

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

[16] The Claimant already succeeded in his appeal before the General Division in showing good cause for his delay throughout the entire period from January 24, 2016, to January 9, 2018, and by qualifying at the earlier date of January 24, 2016.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	K. N., Self-represented
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