



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. W. v Canada Employment Insurance Commission*, 2019 SST 450

Tribunal File Number: AD-19-243

BETWEEN:

S. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 15, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] On February 6, 2014, the Applicant, S. W. (Claimant) applied for regular employment insurance benefits (EI benefits) and established a claim with an effective date of January 26, 2014. The Canada Employment Insurance Commission (Commission) subsequently became aware that the Claimant had unreported earnings between March 23, 2014 and April 20, 2014, while on claim, as well as a voluntary separation due to medical reasons. The Commission asked the Claimant for information about her earnings and a medical certificate regarding her incapacity in order to convert her claim to sickness benefits, but the Claimant failed to respond. On November 25, 2014, the Commission issued two decisions: an allocation of the Claimant's undeclared earnings; and a disentitlement on her claim for failing to provide the medical certificate.

[3] On June 21, 2018, the Claimant filed a request for reconsideration. The Commission determined the Claimant did not have good cause for the delay of 1,264 days in requesting a reconsideration and, therefore, did not reconsider its decisions. The Claimant appealed the Commission's denial of her request to extend the time for reconsideration to the General Division of the Tribunal.

[4] The General Division concluded that the Commission had exercised its discretion in a judicial manner in denying the Claimant's request to extend the 30-day period to make a request for reconsideration of a decision. The General Division found that the Claimant had not given a reasonable explanation for the delay and that she had not demonstrated a continuing intention to request reconsideration.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She puts forward that the Commission's agent might have noted information in her file but that the information was never communicated to her. She is of

the view that the General Division could have been more understanding of the situation since the Commission's agents do make mistakes.

[6] The Tribunal sent a letter to the Claimant asking her to explain in details her grounds of appeal on the Commission's refusal of her request to extend the 30-day period for reconsideration of the November 25, 2014 decisions. In her reply, the Claimant puts forward that she has documents to prove she was laid off from X after the completion of her contract. She also submits that her doctor would be more than happy to provide her medical record to show she was injured in a car accident.

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

[14] The General Division had to decide whether the Commission exercised its discretion in a judicial manner under section 112 of the Employment Insurance Act (EI Act) when it denied the Claimant's request to extend the 30-day reconsideration period.

[15] The General Division found no reason to interfere with the Commission's decision.

[16] The General Division determined that the decision letters were communicated to the Claimant by December 8, 2014. It gave no weight to the Claimant's statements that she did not recall receiving the November 25, 2014 decision letters. It found that the Claimant was well aware that there were outstanding issues with her claim for EI benefits, as these were discussed with her in telephone conversations with the Commission's agents on July 25, 2014 and September 30, 2014 respectively. Yet by her own admission, she did not bother to open all of her mail.

[17] The General Division took notice that the Claimant acknowledged receipt of the notice of debt that was mailed to the same address only four days after the two decision letters, as well as the monthly statements from the Canada Revenue Agency (CRA) that

were also mailed to her at that same address starting the same month as the decision letters. It considered that the Claimant had not moved from her address and that the Commission had no record of any mail being returned as undeliverable.

[18] The Claimant testified that she spoke with a Commission representative sometime in 2015 about the EI overpayment that was added to her debt, and that she assumed everything was resolved because she never heard back from anyone until her wages were garnished in 2018. The General Division found that the Claimant's explanation for requesting a longer period was unreasonable. The Claimant could simply not assume everything was resolved given the amount of the debt and the fact that it was never removed from the Claimant's monthly statements from the CRA, which continued to be mailed to her throughout 2015, 2016, 2017 and 2018.

[19] The General Division also found that the Claimant had not demonstrated a continuing intention to request a reconsideration because she took no steps whatsoever to contact the Commission or to follow-up on the November 25, 2014, decisions. She only reacted over three years later, when her wages were garnished in March 2018. She then filed her request for reconsideration on June 15, 2018.

[20] The General Division, after reviewing the evidence of the Claimant, determined that the Commission had properly exercised its discretion under section 112 of the EI Act and the *Reconsideration Regulations* when it determined that the Claimant did not have a reasonable explanation for the delay in making the request for reconsideration and that she did not demonstrate a continuing intention to request the reconsideration.

[21] Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing where you can re-present evidence and hope for a favourable outcome.

[22] In her 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. She 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 the decision

that the Commission acted in a judicial manner when it refused to extend the 30 day period.

[23] 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 her request for leave to appeal, The Tribunal finds that the 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: | S. W., Self-represented |
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