



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *J. M. v Canada Employment Insurance Commission*, 2019 SST 498

Tribunal File Number: AD-18-481

BETWEEN:

**J. M.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 21, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] On June 22, 2011, the Applicant, J. M. (Claimant), applied for Employment Insurance benefits. An Employment Insurance benefit period was established effective June 29, 2011. On January 16, 2013, the Employment Insurance Commission (Commission) asked the Claimant to explain why he had not reported his salary for the weeks from October 17, 2011, to October 31, 2011, as well as the fact that he had left his employment at X. The Claimant did not answer the Commission's questions.

[3] On August 13, 2014, the Commission decided to disentitle the Claimant from benefits because he had voluntarily left his employment without just cause. It sought to recover the benefits it had overpaid. After collection proceedings launched by the Canada Revenue Agency (CRA), the Claimant asked on October 5, 2017, for the decision to be reconsidered. On November 2, 2017, the Commission refused to reconsider its decision. The Claimant appealed to the Tribunal's General Division.

[4] The General Division determined that the Commission had not exercised its discretion judicially when it denied the Claimant's application for an extension of time to request a reconsideration of the August 13, 2014, decision. However, it found that the Claimant had no reasonable explanation for his delay and that he had failed to demonstrate a continuing intention to request a reconsideration of the Commission's decision.

[5] The Claimant now seeks leave to appeal the General Division decision.

[6] In support of his application for leave to appeal, the Claimant restated the facts he had presented before the Commission and the General Division.

[7] On April 15, 2019, the Tribunal sent a letter to the Claimant asking him to explain in detail why he was applying for leave to appeal under section 58(1) of the DESD Act. In his response to the Tribunal, the Claimant again repeated that he had not worked for X and that he considered the amount claimed by the Commission to be excessive.

[8] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal might have a reasonable chance of success.

[9] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

## **ISSUES**

[10] Was the application for leave to appeal filed within the time permitted?

[11] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

## **ANALYSIS**

[12] 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; erred in law in making its decision, whether or not the error appears on the face of the record; or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[13] An application for leave to appeal is a preliminary step to a hearing on the merits of the case. 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 his case; instead, he must establish that his appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[14] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal has a reasonable chance of success.

[15] This means that the Tribunal must be in a position to determine, in accordance with section 58(1) of the DESD Act, whether there is an issue of natural justice, jurisdiction, law, or fact that may justify the setting aside of the decision under review.

**Issue 1: Was the request for leave to appeal filed within the time permitted?**

[16] No. After the Claimant received the General Division decision dated June 4, 2018, he filed his application for leave to appeal only on July 27, 2018. He explained that he hesitated to file his application because, in his view, the General Division had not addressed his challenge about the voluntary leaving.

[17] In light of the circumstances in this case, the Tribunal finds that it is in the interest of justice to grant the Claimant an extension of time to apply for leave to appeal. The delay is not excessive, and the extension of time would not prejudice the Commission.<sup>1</sup>

**Issue 2: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?**

[18] In his application for leave to appeal, the Claimant restated the facts that he presented before the Commission and the General Division to the effect that he did not work for X and that he considers the amount claimed by the Commission to be excessive because he did not receive \$397.31 in Employment Insurance benefits.

[19] However, the issue before the General Division concerned the Claimant's failure to file his reconsideration request about the voluntary leaving within the required 30-day period.

[20] The General Division had to decide whether the Commission had exercised its discretion judicially when it refused the application to extend the 30-day period for filing a request for a reconsideration of the initial decision, under section 112(1) of the

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<sup>1</sup> *X (Re)*, 2014 FCA 249; *Grewal v Minister of Employment and Immigration*, [1985] 2 FC 263 (FCA).

*Employment Insurance Act* (EI Act) and section 1 of the *Reconsideration Request Regulations* (Regulations).

[21] The Claimant did not submit the reconsideration request until October 5, 2017, more than three years after the August 13, 2014, decision, which he admitted he had received.

[22] The Claimant explained that he delayed in requesting the reconsideration of the decision on the voluntary leaving because he had to settle a number of files with the tax authorities and because he was going through a difficult time because of his divorce. Despite the numerous letters received, he did not pay attention to the Commission until the CRA proceeded to recover the sum owing.

[23] After reviewing the Claimant's evidence, the General Division determined that the Commission had not properly exercised its discretion under section 112 of the EI Act and the Regulations. However, it also found that the Claimant had not presented a reasonable explanation for the delay in filing his reconsideration request and that he had not proven a continuing intention to request a reconsideration since he did not act until after the CRA began recovery proceedings.

[24] In his application for leave to appeal, the Claimant did not identify any errors of jurisdiction or failure by the General Division to observe a principle of natural justice. He did not identify errors in law or erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it in its decision to refuse the extension of the 30 days to request a reconsideration of the Commission's decision.

[25] For the reasons above, and after reviewing the appeal file, the General Division decision, and the Claimant's arguments in support of his application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

**CONCLUSION**

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

Pierre Lafontaine

Member, Appeal Division

REPRESENTATIVE:	J. M., self-represented
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