



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. D. v Canada Employment Insurance Commission*, 2019 SST 508

Tribunal File Number: AD-19-250

BETWEEN:

M. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 23, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, M. D. (Claimant), applied for employment insurance sickness benefits in September 2017. He asked the Canada Employment Insurance Commission (Commission) to backdate his application to February 2017. The Commission agreed and the Claimant received sickness benefits until July 29, 2017. In October 2018, the Claimant requested regular benefits to start immediately after his sickness benefits; that is, he requested regular benefits from July 30, 2017. The Commission determined that the Claimant's request for benefits was late and decided that he did not have good cause for his delay. The Commission refused the Claimant's late request for benefits. The Claimant requested a reconsideration and the Commission maintained its initial decision. The Claimant appealed to the General Division of the Tribunal.

[3] The General Division found that the Claimant did not show that he had good cause for his delay because a reasonable person in his situation would have asked the Commission about his entitlement to regular benefits at the same time he asked for the antedate for sickness benefits. As a result, the General Division concluded that the Claimant could not receive regular benefits for the period of July 30, 2017, until his return to work in January 2018.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. The Claimant does not deny that he did not act as a reasonable person in regards to his application and appeal for regular benefits in 2017. He apologizes for wasting the General Division's time by missing his appeal hearing. He hopes that the evidence he now provides will help him qualify for a reassessment.

[5] On April 15, 2019, the Tribunal sent to the Claimant a letter requesting that he explain in detail why he was appealing the decision of the General Division. The

Claimant was informed that an appeal to the Appeal Division is not a new hearing where you can present evidence and hope for a new favorable outcome. He was invited to consider an application under section 66 of the *Department of Employment and Social Development Act* (DESD Act).

[6] In his answer to the Tribunal, the Claimant puts forward that he did not provide the General Division with all the evidence he wanted and that he missed the oral hearing. He would like to have the opportunity to present his appeal.

[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 arguably 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 his application for leave to appeal, the Claimant acknowledges that he did not act as a reasonable person in regards to his application and appeal for regular benefits in 2017. He apologizes for wasting the General Division's time by missing his appeal hearing. He hopes that the evidence he now provides will help him qualify for a reassessment.

[15] On April 15, 2019, the Tribunal sent the Claimant a letter requesting that he explain in detail why he was appealing the decision of the General Division. In his answer to the Tribunal, the Claimant puts forward that the principles of natural justice require an oral hearing. He submits that he did not provide the General Division with all the evidence he wanted because he missed the oral hearing. He would like to have the opportunity to present his appeal.

[16] The General Division found that the operations staff had emailed the notice of hearing to the Claimant at the email address he had provided on his notice of appeal. The operations staff also left a voicemail message for the Claimant notifying him of the upcoming hearing. The Claimant, who does not deny having received the notice of hearing, did not contact the General Division to request an adjournment and did not appear at the hearing.

[17] In his application for leave to appeal, the Claimant does not provide any explanation as to why he did not attend the General Division hearing.

[18] Therefore, the arguments of the Claimant do not demonstrate that the General Division failed to observe a principle of natural justice. He was properly advised of the hearing and had the opportunity to attend to fully present his case.

[19] The General Division found that the Claimant did not act as a reasonable person in his situation. It gave particular weight to the fact that the Claimant had already been in contact with the Commission in September 2017, when he applied and requested an antedate.

[20] The General Division also gave weight to the fact that he received payment of sickness benefits in November and December 2017. It found that a reasonable person in the same situation, who was already speaking to the Commission about his entitlement to sickness benefits, would have also asked the Commission about his entitlement to regular employment insurance benefits. However, the Claimant waited until October 3, 2018 to request regular benefits, a delay of over eight months. As a result, the General Division concluded that the Claimant could not receive regular benefits for the period of July 30, 2017 until his return to work in January 2018.

[21] The Claimant would like the Appeal Division to reassess his case based on the new evidence he has provided in support of his application for leave to appeal. Unfortunately, for the Claimant, it is well-established case law that an appeal to the Appeal Division is not a new hearing where you can present evidence and hope for a new favorable outcome. The powers of the Appeal Division are limited by section 58(1) of the DESD Act.

[22] 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.

[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 his 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

REPRESENTATIVE:	M. D., Self-represented
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