Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *J. S. v Canada Employment Insurance Commission*, 2019 SST 582

Tribunal File Number: AD-19-376

BETWEEN:

J. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: June 12, 2019

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] The Applicant, J. S. (Claimant), applied for Employment Insurance regular benefits in January 2019 and subsequently requested an antedate of her application to October 1, 2014. She was late in applying for benefits because she had been preoccupied with and overwhelmed by personal matters. In 2014, her marriage ended. As well, she moved to another province to care for her ailing mother, who eventually passed away in 2016. She also had her own health concerns. The Respondent, the Canada Employment Insurance Commission (Commission), denied the Claimant's request to start her benefits on September 28, 2014, because it found she had not proven that between September 28, 2014 and January 26, 2019, she had good cause for the delay in applying for benefits.[1] The Claimant sought a reconsideration,[2] but the Commission maintained its decision.[3]

[3] The Claimant appealed the Commission's reconsideration decision to the General Division, which dismissed her appeal because it found that she had not met part of the requirements under subsection 10(4) of the *Employment Insurance Act,* namely, that there was good cause for the entire period of delay in filing her application for benefits. The Claimant is now seeking leave to appeal the General Division's decision. I must decide whether the appeal has a reasonable chance of success.

[4] For the reasons that follow, I am not satisfied that the appeal has a reasonable chance of success and the application for leave to appeal is therefore refused

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[1] Commission's letter dated March 7, 2019, at GD3-16.
[2] Request for reconsideration, at GD3-16 to GD3-21.
[3] Commission's reconsideration decision dated March 26, 2019, at GD3-24 to GD3-25.

ISSUE

[5] Is there an arguable case that the General Division erred in law by applying too high a standard for the reasonable person?

ANALYSIS

[6] Under subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA), the only grounds of appeal are that:

> (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
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> (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
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> (c) the General Division 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.

[7] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.[4] This is a relatively low bar. At the leave to appeal stage, it is a lower hurdle to meet than the one that must be met on the hearing of the appeal of the merits. Claimants do not have to prove their case; they simply have to establish that the appeal has a reasonable chance of success based on a reviewable error. The Federal Court endorsed this approach in *Joseph v. Canada (Attorney General)*.[5]

[8] The Claimant argues that the General Division erred in law by applying too high a standard for the reasonable person when it considered whether she had shown good cause for the delay in making a claim for Employment Insurance benefits. In her case, she was grappling with numerous personal issues and tragedies, including her mother's two strokes and subsequent

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[4] *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[5] *Joseph v. Canada (Attorney General)*, 2017 FC 391.

passing, marital issues resulting in divorce, and her own health concerns. She acknowledges that she "was not a reasonable person through these events."[6] She argues that, had she been of reasonable thought, she would have pursued a claim for benefits. She wrote, "I don't think the decision to decide what was reasonable was considered."[7] From this, I understand that the Claimant is arguing that the reasonable person is not an average or ordinary person who meets a standard of perfection, but someone in her circumstances with a fraught mental state from dealing with multiple personal issues and tragedies. The Claimant argues that the General Division should have applied the reasonable person test using someone in her personal circumstances.

[9] The General Division examined the Claimant's personal circumstances and, at paragraph 26, determined that a "reasonable and prudent person in the same circumstances would have made inquiries earlier than 2017." At paragraph 28, the General Division re-stated the test that it had applied. The General Division wrote that it could not find that the Claimant had good cause for the entire period of delay because she did not act as a reasonable and prudent person would have done "in same circumstances."

[10] The test that the General Division applied is consistent with the test set out by the Federal Court of Appeal in *Quadir v. Canada (Attorney General),* that being what a reasonable person would have done "in her circumstances."[8]

[11] The General Division viewed the "reasonable person" as someone "in the same circumstances" as the Claimant. Indeed, the General Division relied on *Howard v. Canada (Attorney General),*[9] in finding that the circumstances in that case were similar to those of the Claimant.

[12] In *Howard,* the Federal Court of Appeal found that the applicant in that case had not established good cause for a sixteen-month delay. The applicant had been looking for employment while living on a severance package and his savings. The Federal Court of Appeal agreed that this fact did not constitute good cause. Mr. Howard was dealing with several personal

[6] Application to the Appeal Division – Employment Insurance, at AD1-4.
[7] Ibid.
[8] *Quadir v Canada (Attorney General*), 2018 FCA 21 at para. 8.
[9] *Howard v. Canada (Attorney General)*, 2011 FCA 116.

issues: he had been terminated from his employment, he was caring for his spouse and child who had been injured in a motor vehicle accident, and he was also involved in litigation of his mother's estate. The Federal Court of Appeal noted that while the Board of Referees had considered what it described as "unfortunate 'extenuating circumstances'" ultimately it found that there was no evidence in the record suggesting that these circumstances explained the entire period of delay. The General Division came to the same conclusion based on the evidence before it.

[13] In essence, the Claimant is arguing that the General Division erred in applying settled law to the facts. However, the Federal Court of Appeal has affirmed that the Appeal Division has no jurisdiction to consider errors that merely involve a disagreement on the application of settled law to the facts.[10] The Appeal Division may intervene under subsection 58(1) of the DESDA when an error of mixed fact and law committed by the General Division discloses an extricable legal issue, but such is not the case here.

[14] The Claimant is simply re-arguing her case before the General Division and asserting that I should reassess the evidence and come to a different conclusion based on the same facts that were before the General Division. However, subsection 58(1) of the DESDA does not allow for a reassessment of the evidence or a rehearing of the matter.

[15] Given these considerations, I am not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[16] The application for leave to appeal is refused.

Janet Lew
Member, Appeal Division

APPLICANT:	J. S., self-represented

[10] *Cameron v Canada (Attorney General)*, 2018 FCA 100 and *Garvey v Canada (Attorney General)*, 2018 FCA 118.