



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. P. v Canada Employment Insurance Commission*, 2019 SST 593

Tribunal File Number: AD-19-38

BETWEEN:

M. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: June 21, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, M. P. (Claimant), worked in a bar and stopped working on September 9, 2017, because of his incarceration. The Claimant was released on November 23, 2017, under certain conditions, including that he not return to work for his employer before August 12, 2018.

[3] In the meantime, the Claimant found another job on December 4, 2017, but he stopped working on February 16, 2018, because of a shortage of work. On February 19, 2018, the Claimant filed an initial claim for regular Employment Insurance benefits. The Canada Employment Insurance Commission (Commission) denied the Claimant benefits because it considered that he had voluntarily taken a period of leave from his initial employment without just cause. The Claimant appealed the Commission's decision to the Tribunal's General Division.

[4] The General Division found that the Claimant did not meet his burden of proving that he had just cause to voluntarily take a period of leave. It therefore found that the Claimant was disentitled to benefits.

[5] The Claimant now seeks leave to appeal the General Division decision. In support of his application for leave to appeal, the Claimant argues that he did not voluntarily take a period of leave, but that he was required to take leave because of his incarceration. Therefore, he had just cause to take leave. He argues that he paid for his offence and contributed to the Employment Insurance fund. He is therefore entitled to benefits.

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

[7] 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

[8] Issue 1: Was the application for leave to appeal filed on time?

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

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; 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.

[11] 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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that the 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 may succeed.

[12] 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.

[13] 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 could lead to the setting aside of the decision under review.

Issue 1: Was the application for leave to appeal filed on time?

[14] No. The General Division decision was sent to the Claimant on November 19, 2018. The Claimant filed his application for leave to appeal on January 16, 2019. On the face of the record, however, there appears to have been some confusion in the handling of the file since the beginning of the appeal proceedings. The Claimant did not receive an acknowledgement that his appeal had been received until June 19, 2019.

[15] 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 does not prejudice the Commission.¹

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

[16] The Claimant now seeks leave from the Tribunal to appeal the General Division decision. In support of his application for leave to appeal, the Claimant argues that he did not voluntarily take a period of leave, but that he was required to take leave because of his incarceration. Therefore, he had just cause to take leave. He argues that he paid for his offence and contributed to the Employment Insurance fund. He is therefore entitled to benefits.

[17] The Tribunal finds it necessary to reaffirm the fact that contributing to the Employment Insurance fund does not automatically make a claimant entitled. As with an insurance scheme, benefits are payable based on eligibility criteria.

[18] The General Division found that the Claimant could not be reinstated to his employment because of the conditions of release resulting from his incarceration. Therefore, the Appellant took a leave from his employer because of his own actions that led to a parole officer prohibiting him from returning to his employment before the end of his incarceration.

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

[19] It is well-established case law that a claimant who, through their own actions, cannot perform the services the employer requires of them under their employment contract cannot force others to bear the burden of their unemployment.²

[20] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal does not have a reasonable chance of success. The Claimant has not raised an issue that could lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	M. P., self-represented
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² *Canada (Attorney General) v Borden*, 2004 FCA 176; *Canada (Attorney General) v Lavallée*, 2003 FCA 255; *Canada (Attorney General) v Brissette*, [1994] 1 FC 684, 1993 CanLII 3020 (FCA).