



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. L. v Canada Employment Insurance Commission*, 2019 SST 686

Tribunal File Number: AD-19-446

BETWEEN:

C. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: July 30, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] C. L. is the Claimant in this case. At the end of April 2016, the Claimant submitted an initial claim for Employment Insurance (EI) regular benefits.¹ Weekly reports were submitted and benefits were then paid throughout the following weeks and months.

[3] The Canada Employment Insurance Commission later came to learn, however, that the Claimant received both employment income and EI benefits during a 12-week period between May and August 2016. As a result, the Commission demanded that the Claimant reimburse the benefits that he had received during this time. The Commission also imposed a penalty and issued a notice of violation against the Claimant, though the Commission later withdrew the notice of violation.

[4] On the one hand, the Claimant denies receiving any EI benefits. Instead, he asserts that that his ex-wife must have been applying for and collecting these benefits without his knowledge or consent. They separated in May 2016, the month after she helped him file his initial claim for benefits.

[5] On the other hand, the Commission argues that the Claimant was responsible for the administration of his own file and for safeguarding the confidential access code used to claim his benefits. The Commission remains unconvinced that someone other than the Claimant received his EI benefits.

[6] For reasons the Claimant has explained, however, it took him a long time to gather the evidence he needed against his ex-wife. He says that the Commission's agents have given him various pieces of advice and that he has tried his best to follow that advice. But it never seemed to be enough.

¹ GD3-4 to 15.

[7] In the end, Commission agents told the Claimant that his only option was to appeal the Commission's reconsideration decision to the Tribunal's General Division, but his appeal was filed over a year late. As a result, the General Division concluded that it had no power to extend the time for the Claimant to file his appeal. This means that the General Division was unable to consider the substance of the Claimant's case.

[8] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. But my role is very limited: I can only examine whether the General Division might have made one of three possible errors when reaching its decision. In the end, I concluded that the Claimant's appeal has no reasonable chance of success. As a result, I must refuse his application for leave to appeal.

[9] At the risk of sending the Claimant back into a bureaucratic maze, I will nevertheless mention a few options that might still be available to him in these difficult circumstances.

ISSUE

[10] Has the Claimant raised an arguable ground on which the appeal might succeed?

ANALYSIS

[11] The Tribunal follows the law and procedures set out in the *Department of Employment and Social Development Act* (DESD Act). As a result, this appeal is following a two-step process: the leave to appeal stage and the merits stage. The appeal will move on to the merits stage unless it has no reasonable chance of success.²

[12] The legal test that the Claimant needs to meet at the leave to appeal stage is a low one: Is there any arguable ground on which the appeal might succeed?³ To decide this question, I can only consider whether the General Division could have committed one of the three errors listed in the DESD Act.⁴

² DESD Act, ss 58(2) and 58(3).

³ *Osoj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

⁴ Section 58(1) of the DESD Act defines the three errors (or grounds of appeal) that I am able to consider.

Has the Claimant raised an arguable ground on which the appeal might succeed?

[13] I understand the Claimant's arguments, but they all relate to the substance of his case. The General Division never considered the substance of the Claimant's case, however. This is because the Claimant filed his appeal over a year late. The General Division has no discretion in cases like this one: the DESD Act prevents the General Division from analyzing the Claimant's arguments in depth.⁵

[14] In spite of this conclusion, I have gone beyond the four corners of the Claimant's application to the Appeal Division and considered whether the General Division might have misinterpreted or failed to properly consider relevant evidence.⁶ If this were the case, then I would grant leave to appeal regardless of any technical problems with the Claimant's written materials.

[15] In short, the General Division concluded that the Claimant received the Commission's reconsideration decision on or around June 21, 2017. It also found that the Claimant filed his appeal with the General Division on April 29, 2019. The Claimant does not dispute these dates. Indeed, they are well supported by the evidence. Since more than a year passed between these dates, the General Division had no choice but to conclude that the appeal could not proceed.

[16] In reaching this conclusion, I am satisfied that the General Division neither misinterpreted nor failed to properly consider any relevant evidence.

[17] As a result, the Claimant's appeal has no reasonable chance of success and his application for leave to appeal must be refused.

What are the Claimant's remaining options?

[18] Though I have no choice but to refuse leave to appeal in this case, I am left with the regrettable impression that the Claimant's allegations of fraud against his ex-wife have never been fully considered.

⁵ Section 52(2) of the DESD Act gives the General Division the power to extend the time in which an appeal can be brought, but its power is limited to just those cases that are less than a year late.

⁶ *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.

[19] Nevertheless, previous court decisions recognize that the Claimant should not be liable to repay benefits if he can establish that they were fraudulently collected by his ex-spouse. To prove his case, the Claimant must show that he never received the benefits and that they were obtained without his knowledge.⁷

[20] On this point, I note that the Claimant's ex-wife helped him to file his initial claim for EI benefits.⁸ It is not surprising therefore that she might have had access to all the information that she needed to file additional claims too.

[21] In addition, the Claimant reports that

- a) the bank details on his EI account were changed around the time of his separation;
- b) the new bank account belonged solely to his ex-wife;⁹ and
- c) contrary to what he was told by Commission agents, the Claimant's bank confirmed that EI benefits in his name could have been deposited into an account bearing someone else's name.¹⁰

[22] Finally, concerning the recommendation that the Claimant report his ex-wife's fraudulent activities to the police, the Claimant said that he tried this, but the police refused to pursue what they saw as a domestic matter.¹¹

[23] However, the Claimant submitted all of this information long after the Commission had already made its reconsideration decision. As a result, a Commission agent told the Claimant that his only recourse was to appeal the reconsideration decision to the Tribunal's General Division.¹² Unfortunately, however, the Claimant's appeal was already more than a year late.

⁷ *Fournier v Canada (Minister of Human Resources Development)*, 2002 FCA 138, <<http://canlii.ca/t/4j6t>>.

⁸ GD3-9.

⁹ GD3-93 to 103.

¹⁰ GD3-145.

¹¹ GD3-124.

¹² GD3-119 and GD3-131 to 133.

[24] Nevertheless, section 111 of the EI Act does allow the Commission to re-open a file based on new facts.¹³ This is sometimes referred to as a new facts application. In this context, however, the courts have given a very narrow meaning to the expression “new facts”.

[25] I recognize that the Commission might have already made at least one decision under section 111 of the EI Act. Although section 111 is not specifically mentioned, that decision can be found in a letter dated April 15, 2019.¹⁴

[26] Admittedly, I find it a bit peculiar that the only recourse mentioned in the Commission’s April 15, 2019, letter was an appeal to the Tribunal. Although the question is not immediately before me, I understand the EI Act to say that the Claimant could also ask the Commission to reconsider the section 111 decision contained in its April 15, 2019, letter.¹⁵

[27] In turn, should the Claimant be unsatisfied with the Commission’s reconsideration decision, he would then have fresh appeal rights to the Tribunal’s General Division, although limited to the subject of the reconsideration decision.¹⁶

[28] In addition to asking the Commission to reconsider its April 15, 2019, decision, the Claimant could also bring another new facts application. There is no limit to the number of new facts applications that the Claimant can bring. Similarly, there is no specific deadline by which those applications need to be submitted.

[29] Importantly, however, each application needs to be supported by new evidence. Among other options, for example, the Claimant might provide new evidence showing other contexts in which he has tried to pursue allegations of fraud against his ex-wife, explaining the results of those efforts, and attaching as much supportive documentation as possible.

¹³ More specifically, section 111 of the EI Act gives the Commission the power to rescind or amend a previous decision based on new facts, or if it is satisfied that the decision was given without knowledge of, or was based on a mistake as to, some material fact.

¹⁴ GD3-165.

¹⁵ According to section 112 of the EI Act, a person who is the subject of a Commission decision can ask the Commission to reconsider its decision. This reconsideration request might be considered late, though an extension of time remains possible, especially given that the April 15, 2019, letter did not inform the Claimant of his ability to submit a reconsideration request.

¹⁶ According to section 113 of the EI Act, a person who is dissatisfied with one of the Commission’s reconsideration decisions can appeal that decision to the Tribunal.

[30] The Claimant should consider writing to the Commission as soon as possible if he wants to request a reconsideration of the April 15, 2019, decision or if he wants to submit a fresh new facts application.

CONCLUSION

[31] For the reasons described above, the Claimant's appeal has no reasonable chance of success. As a result, the application requesting leave to appeal is refused.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	C. L., self-represented
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Relevant Legal Provisions

Department of Employment and Social Development Act

Appeal — time limit

52 (1) An appeal of a decision must be brought to the General Division in the prescribed form and manner and within,

(a) in the case of a decision made under the *Employment Insurance Act*, 30 days after the day on which it is communicated to the appellant; and

(b) in any other case, 90 days after the day on which the decision is communicated to the appellant.

Extension

(2) The General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the day on which the decision is communicated to the appellant.

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Grounds of appeal

58 (1) 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;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(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.

Criteria

(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

Decision

(3) The Appeal Division must either grant or refuse leave to appeal.

Employment Insurance Act

Rescission or amendment of decision

111 The Commission may rescind or amend a decision given in any particular claim for benefits if new facts are presented or if it is satisfied that the decision was given without knowledge of, or was based on a mistake as to, some material fact.

Reconsideration — Commission

112 (1) A claimant or other person who is the subject of a decision of the Commission, or the employer of the claimant, may make a request to the Commission in the prescribed form and manner for a reconsideration of that decision at any time within

- (a) 30 days after the day on which a decision is communicated to them; or
- (b) any further time that the Commission may allow.

Reconsideration

(2) The Commission must reconsider its decision if a request is made under subsection (1).

Regulations

(3) The Governor in Council may make regulations setting out the circumstances in which the Commission may allow a longer period to make a request under subsection (1).

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Appeal to Social Security Tribunal

113 A party who is dissatisfied with a decision of the Commission made under section 112, including a decision in relation to further time to make a request, may appeal the decision to the Social Security Tribunal established under section 44 of the Department of Employment and Social Development Act