



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *P. V. v Canada Employment Insurance Commission*, 2019 SST 698

Tribunal File Number: AD-19-272

BETWEEN:

**P. V.**

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: August 2, 2019

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] On February 13, 2012; November 23, 2012; December 19, 2012; and January 30, 2013; the Commission made several decisions on the files of the Appellant, P. V. (Claimant), concerning voluntary leaving, undeclared earnings, an unestablished benefit period, a warning, and penalties and a notice of violation. The Claimant had 30 days to request a reconsideration of those decisions. The Claimant requested a reconsideration of those decisions on September 11, 2018.

[3] On October 11, 2018, the Commission informed the Claimant that it had reviewed the reasons that he had provided for his delay in requesting a reconsideration of its decisions, but, in the end, it determined that those reasons did not meet the requirements of the *Reconsideration Request Regulations* (Regulations). Therefore, the Commission informed the Claimant that it would not reconsider the decisions. The Claimant appealed to the General Division.

[4] The General Division found that the Commission had exercised its discretion judicially when it refused the Claimant's request for an extension of time to request a reconsideration of the decisions.

[5] The Claimant now seeks leave to appeal the General Division decision. In support of his leave to appeal, he argues that a Tribunal officer misinformed him about the outcome of his General Division appeal and that this shocked him.

[6] On April 24, 2019, the Tribunal sent the Claimant a letter asking him to explain in detail why he was requesting leave to appeal the Commission's refusal to extend the period to request a reconsideration of the decisions, in accordance with section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[7] On May 27, 2019, the Claimant asked for additional time to address the Tribunal's request for an explanation. The Tribunal granted the Claimant additional time until July 12, 2019. However, the Claimant did not address the Tribunal's request within the additional time granted.

[8] 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.

[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.

### **ISSUE**

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

### **ANALYSIS**

[11] 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.

[12] 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.

[13] 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.

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

[15] The Claimant is seeking leave to appeal the General Division decision. In support of his leave to appeal, he argues that a Tribunal officer misinformed him about the outcome of his General Division appeal and that this shocked him.

[16] The Tribunal notes that, even though the [translation] "Analysis" section of the April 10, 2019, General Division decision leaves no doubt as to the outcome of the appeal, that decision does erroneously state in the [translation] "Conclusion" section that the Claimant's appeal is allowed. That error unfortunately resulted in a Tribunal officer telling the Claimant the wrong outcome of the appeal. However, on April 12, 2019, the General Division immediately issued a corrected decision indicating that the Claimant's appeal was actually dismissed.

[17] The issue before the General Division was about the Claimant's failure to file his request for reconsideration with the Commission within the established 30-day time limit.

[18] The General Division had to decide whether the Commission had exercised its discretion judicially when it refused the request to extend the 30-day time limit to make a request for reconsideration of the initial decision, under section 112(1) of the *Employment Insurance Act* (EI Act) and section 1 of the Regulations.

[19] The Claimant did not make a request for reconsideration of the Commission's decisions before September 11, 2018, which is more than 365 days after the decisions were made. The Claimant knew about the decisions for more than 30 days because he

made payment arrangements with the Canada Revenue Agency (CRA) after his wages were garnished.

[20] The Claimant explained that he delayed requesting a reconsideration of the decisions because, following a separation, he consumed alcohol in excessive amounts. He has now been sober for two years. He requested a reconsideration of the decisions in September 2018 because his new partner urged him to do something about that debt so that they could acquire a new house.

[21] After reviewing the Claimant's evidence, the General Division determined that the Commission had properly exercised its discretion under the EI Act and the Regulations. It determined that the Claimant had not given a reasonable explanation for the delay in making his request for reconsideration because he had made payment arrangements with the CRA rather than challenging the decisions and because he had failed to demonstrate a continuing intention to request a reconsideration, since he did not take action until September 2018 following advice from his new partner, despite the fact that he has been sober for the past two years.

[22] The General Division determined that the Commission acted in good faith and considered all the relevant circumstances in the file, while disregarding irrelevant aspects, when it refused to extend the time for requesting a reconsideration of the decisions. The General Division found that the Commission exercised its discretion judicially when it refused to extend the time for requesting a reconsideration of the decisions.

[23] Despite the Tribunal's express request, the Claimant has not mentioned in his application for leave to appeal any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified any errors in law or any 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.

[24] For the reasons mentioned 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**

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	P. V., self-represented
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