



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *E. S. v Canada Employment Insurance Commission*, 2019 SST 910

Tribunal File Number: AD-19-536

BETWEEN:

**E. S.**

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: Janet Lew

Date of Decision: August 26, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The General Division found that the Applicant, E. S. (Claimant) had filed his appeal 17 days after the deadline for filing appeals. The General Division decided not to extend the time for filing the appeal. The Claimant is now seeking leave to appeal the General Division's decision. This means that he has to get permission from the Appeal Division before he can move on to the next stage of his appeal. I have to decide whether the appeal has a reasonable chance of success.

[3] For the reasons that follow, I am not satisfied that the appeal has a reasonable chance of success and I am therefore refusing the Claimant's application for leave to appeal.

### **FACTUAL BACKGROUND**

[4] After leaving his employment in February 2016, the Claimant applied for Employment Insurance regular benefits. In March 2016, the Respondent, the Canada Employment Insurance Commission (Commission) denied the Claimant's application for benefits because it found that the Claimant had voluntarily left his employment without just cause and that voluntarily leaving was not his only reasonable alternative.<sup>1</sup>

[5] The Claimant asked the Commission to reconsider its March 2016 decision. He said that the Commission had verbally communicated its decision to him in late February 2016 and that the decision had been communicated to him in March 30, 2016. He asked for the reconsideration in March 2019, explaining that he was late in asking the Commission for a reconsideration because he did not know that he could ask for one.<sup>2</sup> The Commission decided it would not reconsider its decision. The Commission noted that more than 30 days had passed since it communicated its decision to the Claimant. The Commission stated that it had considered the

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<sup>1</sup> See Commission's decision dated March 22, 2016, at GD3-13 to GD3-14.

<sup>2</sup> Request for Reconsideration of an Employment Insurance (EI) decision, at GD3-15.

Claimant's explanation for his delay in asking for a reconsideration, but it determined that his explanation "does not meet the requirements of the *Reconsideration Request Regulations*."<sup>3</sup>

[6] The Claimant appealed to the General Division. He filed a Notice of Appeal with the General Division, but it too was late, even though he could not remember when the Commission communicated its letter of April 1, 2019 to him. He explained that he was late in filing his notice of appeal because he "did not know [he] could appeal before."<sup>4</sup>

[7] The General Division considered whether it should extend the time for filing the Notice of Appeal, but found that it was against the interests of justice to extend the time because it could not find that there was an arguable case or that the Claimant had a continuing intention to pursue an appeal or a reasonable explanation for his delay.

[8] The Claimant filed an appeal with the Appeal Division. He wrote,

Again I am appealing this. I was let go of my job ... Feb 19/2016. I was charged with a crime but was dropped. I had to either resign or be fired so I applied for [Employment Insurance benefits] and I was denied. Did not know at the time that I could appeal it. But after about 3 years I learned that I could. So in the meantime I have lived with nothing. As I have paid into [Employment Insurance] when I was working. For 3 years no money coming in. So I'm hearing [*sic*] as I'm very mad that I have been paid my back pay. So in closing I need to be paid some back pay money.

[9] The Social Security Tribunal wrote to the Claimant, asking him to explain why he was appealing the General Division's decision. It asked him to identify the reasons for his appeal. The Claimant replied, explaining that he was appealing because he has nothing to live on. He notes that he has contributed to the Employment Insurance program for years but has not received any help from anyone. He says that the Social Security Tribunal's mistake is "passing it over." He explains that he was late in the first place because he did know his appeal rights.<sup>5</sup>

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<sup>3</sup> See Commission's letter dated April 1, 2019, at GD3-21.

<sup>4</sup> See Notice of Appeal, at GD2-3.

<sup>5</sup> See Claimant's undated letter at AD1B-3.

## ISSUE

[10] Are there any grounds of appeal? If so, does the appeal have a reasonable chance of success?

## ANALYSIS

[11] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that the Claimant's reasons for appeal fall into at least one of the three grounds of appeal listed in subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA). The appeal also has to have a reasonable chance of success.

[12] The only three grounds of appeal under subsection 58(1) of the DESDA are:

- (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.

[13] A reasonable chance of success is the same thing as an arguable case at law.<sup>6</sup> This is a relatively low bar because claimants do not have to prove their case; they simply have to show that there is an arguable case. At the actual appeal, the bar is much higher.

### **Are there any grounds of appeal?**

[14] While I recognize why the Claimant is pursuing an appeal, none of the reasons he has given fall into any of the grounds of appeal under subsection 58(1) of the DESDA.

[15] I have reviewed the underlying record, to ensure that the General Division neither erred in law nor overlooked or misconstrued any important evidence or arguments. The General

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<sup>6</sup> This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

Division member's summary of the facts is consistent with the evidentiary record and his analysis is sound.

[16] The General Division correctly noted that the Claimant was late in filing a notice of appeal to the General Division and that it therefore had to determine whether it should extend the time for filing the notice of appeal to the General Division. The General Division also correctly identified the applicable statutory provisions and case law. It correctly noted that the overriding consideration was the interests of justice. The General Division also determined that, although there was unlikely to be any prejudice to the Commission, the Claimant had not shown that he had an arguable case on the issue that he was appealing from the Commission. The General Division also found that the Claimant did not offer a reasonable explanation for the delay, or show that he had a continuing intention to pursue an appeal.

[17] Essentially, the Claimant is asking me to reconsider the General Division's decision and to give a different decision that is favourable to him. However, subsection 58(1) of the DESDA does not allow for a reassessment of the evidence or a rehearing of the matter. But, even if the subsection let me reassess the evidence that was before the General Division, I would have arrived at the same decision as the General Division.

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

**CONCLUSION**

[19] For the above reasons, the application for leave to appeal is refused.

Janet Lew  
Member, Appeal Division

APPLICANT:	E. S., Self-represented
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