



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. K. v Canada Employment Insurance Commission*, 2019 SST 990

Tribunal File Number: AD-19-609

BETWEEN:

N. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: October 8, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, N. K., applied for and received Employment Insurance (EI) benefits effective December 2013.

[3] The Respondent, the Canada Employment Insurance Commission, subsequently became aware that the Applicant was employed and had not disclosed revenue earned in 2013 and 2014. The Respondent allocated those earnings and applied them against the Applicant's EI claim. An overpayment was created that the Applicant was required to repay.

[4] The recourse available to the Applicant in 2016, when the reconsideration decision was communicated to her, was to file an appeal; she did not do so. The Applicant filed an appeal with the General Division of the Social Security Tribunal of Canada in August 2019.

[5] The General Division found that: the decision was communicated to the Applicant by May 16, 2016; she did not file an appeal in the established 30-day appeal period; and she took the appropriate step to dispute the May 2016 reconsideration decision more than one year after the decision was communicated to her. Therefore, the Tribunal cannot grant an extension of time and the appeal cannot proceed.

[6] The Applicant filed the Application with the Appeal Division and submitted that the General Division did not properly evaluate her case. She also refers to additional documents.

[7] I find that the appeal does not have a reasonable chance of success because the application for leave to appeal simply repeats arguments the Applicant made to the General Division and does not present any reviewable errors.

ISSUE

[8] Is there an arguable case that the General Division made a serious error in its findings of fact by concluding that the Applicant did not satisfy the factors required to be allowed a longer period to appeal?

ANALYSIS

[9] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.¹

[10] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?²

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error.⁴ The only reviewable errors are the following: 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] The Applicant submits that the General Division failed to consider her specific circumstances. She also submits that it failed to consider that she was mentally impaired and hospitalized several times.

¹ *Department of Employment and Social Development Act* (DESD Act) at ss 56(1) and 58(3).

² *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Murphy v Canada (Attorney General)*, 2016 FC 1208 at para 36; *Glover v Canada (Attorney General)*, 2017 FC 363 at para 22.

³ DESD Act at s 58(2).

⁴ *Ibid.* at s 58(1).

Issue: Is there an arguable case that the General Division made a serious error in its findings of fact by concluding that the Applicant did not satisfy the factors required to be allowed a longer period to appeal?

[13] I find that there is no arguable case that the General Division made a serious error in its findings of fact.

[14] The General Division considered the evidence in the documentary record. The General found that more than one year had passed between when the reconsideration decision was communicated to her and when the appeal was filed.⁵ The law does not permit the Tribunal to grant an extension of time to appeal when one year or more has passed.

[15] In the application for leave to appeal, the Applicant asks that the Appeal Division to look at medical documents. None was attached to the application for leave to appeal.

[16] The Applicant's submissions before the General Division included some medical documents: a discharge summary relating to a hospitalization in January 2019, a letter relating to a hospitalization in June 2018, and documents filed with the Ontario Disability Support Program. The Applicant seeks to reargue her case based on arguments similar to those she made before the General Division. A simple repetition of his arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[17] The Applicant submitted no new documents. Furthermore, new evidence is not a ground of appeal to the Appeal Division. It was up to the Applicant to present any evidence she had to the Commission and to the General Division before or at the hearing.

[18] The application for leave to appeal does not disclose any reviewable errors on the part of the General Division.

⁵ General Division decision at paras 5 and 6.

CONCLUSION

[19] I am satisfied that the appeal has no reasonable chance of success, so the application for leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	N. K., self-represented
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