



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. O. v Canada Employment Insurance Commission*, 2019 SST 995

Tribunal File Number: AD-19-617

BETWEEN:

M. O.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision by: Shu-Tai Cheng

Date of Decision: October 10, 2019

DECISION AND REASONS

DECISION

[1] An extension of time to apply for leave to appeal is refused.

OVERVIEW

[2] The Applicant, M. O., applied for and received Employment Insurance (EI) benefits effective in November 2012 and December 2013.

[3] The Respondent, the Canada Employment Insurance Commission, subsequently became aware that the Applicant was employed and had not disclosed revenue earned. The Respondent imposed penalties for misrepresentation.

[4] The Applicant requested reconsideration and the Commission maintained its decisions. The Applicant filed an appeal with the General Division of the Social Security Tribunal of Canada in May 2016.

[5] The General Division found that: the Applicant made false or misleading statements, and the Commission took into consideration all the circumstances of the case and, in determining the quantum of the penalties, had exercised its discretion in a judicial manner. Therefore, the Tribunal has no authority to interfere with the amount of the penalty or to waive the penalty amounts.

[6] The Applicant filed an application for leave to appeal with the Appeal Division, in September 2019, and submitted that the General Division did not properly evaluate his case. He stated that he was not aware that he could appeal the 2016 General Division decision.

[7] Because the application for leave to appeal was filed late, the Applicant requires an extension of time to bring this appeal.

[8] I find that the appeal cannot be brought, because the application for leave to appeal was filed more than one year after the General Division decision was communicated to the Applicant.

ISSUE

[9] Was the application for leave to appeal filed within one year after the General Division decision was communicated to the Applicant?

ANALYSIS

[10] 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

[11] 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

[12] 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.

[13] The Applicant submits that the General Division failed to consider his specific circumstances.

Issue: Was the application for leave to appeal filed within one year after the General Division decision was communicated to the Applicant?

[14] I find that the Applicant filed his application for leave to appeal on September 9, 2019, more than one year after the General Division decision was communicated to him.

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).

[15] The General Division decision is dated October 26, 2016. It was sent to the Applicant on October 27, 2016, by regular mail.

[16] The Tribunal file includes a telephone log memo, dated November 15, 2016, for a phone call by the Applicant to the Tribunal. According to that telephone log, the Applicant referred to the decision and the decision letter, and he was informed of the leave to appeal process by Tribunal staff.

[17] Therefore, by November 15, 2016, the decision had been communicated to the Applicant.

[18] The Applicant filed an application for leave to appeal on September 9, 2019, more than two years and ten months after the General Division decision was communicated to him.

[19] Although, in some circumstances, the Appeal Division is able to grant an extension of time, the DESD Act provides “in no case may an appeal be brought more than one year after the day on which the decision is communicated to the appellant.”⁵

[20] The Appeal Division must apply the law and is unable to grant an extension of time beyond the one-year period. The Applicant’s appeal cannot be brought.

CONCLUSION

[21] An extension of time is refused. The appeal cannot be brought.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	M. O., self-represented
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⁵ DESD Act at s 52(2).