



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. A. v Canada Employment Insurance Commission*, 2019 SST 996

Tribunal File Number: AD-19-605

BETWEEN:

**S. A.**

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: October 9, 2019

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, S. A. (Claimant), collected several weeks of employment insurance benefits in 2017. The Canada Employment Insurance Commission (Commission) learned that the Claimant was working at the same time he received employment insurance benefits. The Commission made several decisions affecting the Claimant. The Commission's decisions meant that the Claimant had a large debt to repay to the Commission.

[3] The Claimant asked the Commission to reconsider its decisions. The Commission did not change its decision. The Claimant had 30 days to file an appeal to the General Division. The Claimant filed his appeal beyond the 30-day limit.

[4] The General Division refused an extension of time to appeal. It found that the Claimant did not have a reasonable explanation for his delay and had not shown that he had a continuing intention to pursue an appeal. The General Division concluded that it would not be in the interests of justice to allow an extension of time to appeal.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He puts forward that he was ill and had a partial stroke at the time of filing his appeal. The Claimant submits that the whole appeal process started when he was given a number to call by a *Canada Revenue Agency* (CRA) agent.

[6] In his application for leave to appeal, the Claimant requested that the Tribunal proceed with written questions and answers.

[7] On September 9, 2019, the Tribunal sent a letter to the Claimant asking that he explain in detail why he was appealing the decision of the General Division. The Claimant did not answer the Tribunal within the allowed period.

[8] The Tribunal must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[9] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

## **ISSUE**

[10] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

## **ANALYSIS**

[11] Section 58(1) of the *Department of Employment and Social Development Act* (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; it erred in law in making its decision, whether or not the error appears on the face of the record; or it based its decision on an erroneous finding of fact that it had 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. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[13] Therefore, before leave can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[14] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of natural justice,

jurisdiction, law, or fact, the answer to which may lead to the setting aside of the General Division decision under review.

**Issue: Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?**

[15] The Claimant, in his application for leave to appeal, submits that he was ill and had a partial stroke at the time of filing his appeal. The Claimant submits that the whole appeal process started when he was given a number to call by a CRA agent.

[16] The Commission's review decision was mailed to the Claimant on August 24, 2018. The same day, the Commission verbally informed the Claimant that his reconsideration request had been refused and that he could appeal to the Social Security Tribunal. The Claimant filed his appeal to the General Division on June 17, 2019, after receiving a call from the CRA regarding his debt.

[17] The DESD Act confers upon the General Division the discretionary power to extend the time for appeals.

[18] The General Division found that an extension of time under section 52(2) of the DESD Act should be refused. It determined that the Claimant had not shown a continuing intention to pursue the appeal and that he had failed to provide a reasonable explanation for the delay. The General Division found that it did not serve the interests of justice to allow an extension of time to appeal.

[19] For the appeal to be allowed, the Claimant would have to demonstrate that the General Division inappropriately exercised its discretionary power when it refused to grant an extension of time. An improper exercise of discretion occurs when a General Division member gives insufficient weight to relevant factors, proceeds on a wrong principle of law, or erroneously misapprehends the facts or when an obvious injustice would result.

[20] The evidence before the General Division clearly shows that the Claimant did not pursue his appeal and only acted once he received a call from the CRA agent regarding the collection of his debt.

[21] After review, the Commission concluded that the Claimant had received earnings at the same time he was claiming employment insurance benefits, that he had knowingly made false statements when he had failed to report these earnings on his biweekly claimant reports, and that the Commission had exercised its discretion judicially when it imposed a monetary penalty and a notice of violation.

[22] An investigation revealed that during the benefit period, the claimant was employed with X from August 10, 2017 to December 25, 2017. The Claimant did not report any work or earnings for this same period.

[23] During an interview by the Commission held on August 22, 2018, the Claimant did not dispute that he worked for X nor did he indicate the earnings were questionable. The Claimant insisted that he was sick between August and December 2017, while employed with X, and that his daughter was submitting reports for him.

[24] However, the medical evidence before the General Division does not show that the Claimant was suffering from any medical condition that might have rendered him incapable of knowing what he or his daughter was doing or incapable of managing his affairs during the relevant period.

[25] Given these facts, it did not serve the interests of justice to proceed with the appeal.

[26] The Tribunal finds that, despite the Tribunal's specific request, the Claimant has not raised any issue of law, fact, or jurisdiction that might lead to the setting aside the General Division decision under review. Therefore, the appeal has no reasonable chance of success.

## **CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	S. A., Self-represented
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