



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. B. v Canada Employment Insurance Commission*, 2019 SST 1036

Tribunal File Number: AD-19-587

BETWEEN:

S. B.

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 21, 2019

Canada 

DECISION AND REASONS

DECISION

[1] Leave to appeal the decision given by the General Division of the Social Security Tribunal of Canada on July 10, 2019, is refused.

OVERVIEW

[2] The Applicant, S. B., made a renewal claim for Employment Insurance benefits after his seasonal layoff took place in the fall of 2018. He made his claim within the set time frame. However, he did not start submitting his reports until January 16, 2019.

[3] The Respondent, the Canada Employment Insurance Commission, determined that the Applicant had until December 15, 2018, to submit his reports, according to the provisions of the *Employment Insurance Act* (Act). As a result, the Applicant was disentitled from receiving benefits for the period of November 18, 2018, to January 12, 2019.

[4] The Applicant argues that he made the renewal claim on time and that, because he simply forgot and because of the holiday period, he did not try to submit his reports online until January 7, 2019. The system did not allow him to do that, so he filed a new claim.

[5] The Applicant appealed the Commission's decision. The General Division found that the Applicant had not shown good cause for submitting his reports late.

[6] In his leave to appeal application, the Applicant argued that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.

[7] The appeal does not have a reasonable chance of success because the Applicant has not raised any arguable case that the General Division may have made a reviewable error.

ISSUE

[8] Is there an arguable case that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction?

ANALYSIS

[9] An applicant must seek leave 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 a ground of appeal on which the Applicant 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. The only reviewable errors are the following:⁴ 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 made in a perverse or capricious manner or without regard for the material before it.

Is there an arguable case that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction?

[12] No, there is no arguable case that the General Division made an error of natural justice or an error in exercising its jurisdiction.

[13] “Natural justice” refers to fairness of process and includes such procedural protections as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against them. It is settled law that an applicant has the right to expect a fair hearing with a full opportunity to present their case before an impartial decision-maker.⁵

¹ *Department of Employment and Social Development Act* (DESD Act), 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, s 58(2).

⁴ DESD Act, s 58(1).

⁵ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21 to 22.

[14] The Applicant had the opportunity to present his case in person at the General Division hearing. In his application for leave to appeal, he did not explain how the General Division had failed to observe a principle of natural justice, and there was no material evidence supporting the Applicant's argument that procedural protections were ignored.

[15] The appeal does not have a reasonable chance of success based on this ground.

[16] Furthermore, according to the Applicant, the General Division failed to consider his personal circumstances in reaching the conclusion that he had not shown good cause for submitting his reports late. The Applicant argues that a delay should be irrelevant.

[17] However, on reading the General Division decision, I note that it includes the following:

[Translation]

In this case, the Appellant openly admitted that he did not really have any extenuating circumstances to explain his delay other than his forgetfulness and the disruption of the holiday period. He stated that he had been spending time with his family who he had not seen in three years and that his delay was due to an honest mistake and forgetfulness. On January 7, he tried to submit his reports online for the beginning of his benefit period. The system did not allow him to do that because the deadline for submitting his reports had passed. The Claimant states that that confused him, so he filed a new claim.⁶

The Appellant is familiar with the Employment Insurance benefits system. I accept that he had no idea that he had to submit his reports within a certain time. He testified that he worked very hard to save money and that he hardly touched anything that was deposited into his account. In his reality, he did not pay attention to whether he was receiving benefits; he hardly ever touched his bank account. Although he never encountered having to submit his reports on time in the past, the Appellant had many years of experience as a claimant.⁷

⁶ General Division decision at para 10.

⁷ *Ibid.* at para 11.

I recognize that everybody makes mistakes and that the Appellant did not intend to be negligent. However, I find that a reasonable person would have ensured that they filed their reports within the set time frame. Yet, the Appellant waited until January 7 to try to complete his reports and until January 14, 2019, to submit them in person with Service Canada.⁸

[18] Contrary to the Applicant's submission, the General Division considered the Applicant's specific circumstances.

[19] The Applicant has repeated the arguments he presented to the General Division, but he has not raised any arguable case showing that the General Division may have based its decision on a reviewable error.

[20] I have also reviewed the evidence on file. There is no indication that the General Division overlooked or misconstrued important evidence. The Applicant has not raised any error of law or any erroneous finding of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it.

[21] For these reasons, I find that the appeal does not have a reasonable chance of success.

CONCLUSION

[22] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	S. B., self-represented
-----------------	-------------------------

⁸ *Ibid.* at para 12.