



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. M. v Canada Employment Insurance Commission*, 2019 SST 1332

Tribunal File Number: AD-19-784

BETWEEN:

T. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: November 7, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, T. M. (Claimant), a X, is seeking leave to appeal the General Division's decision. Leave to appeal means that an applicant has to get permission from the Appeal Division before they can move on to the next stage of the appeal process.

[3] The Claimant was late when he made a claim for Employment Insurance benefits. Because of this, he could not receive any benefits. The General Division found that the Claimant did not have good cause to file his claim late. As such, it could not antedate his claim as though he had made it on an earlier date.

[4] The Claimant argues that the General Division failed to observe a principle of natural justice. Other than being late when he filed his claim, he says that he met all the criteria to qualify for benefits. He does not have any other sources of funding. He is really arguing for compassion, given his circumstances.

[5] I have to decide whether the appeal has a reasonable chance of success. For the reasons that follow, I am not satisfied that the appeal has a reasonable chance of success and I am therefore refusing leave to appeal.

ISSUE

[6] Is there an arguable case that the General Division failed to observe a principle of natural justice?

ANALYSIS

[7] 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.

[8] 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.

[9] A reasonable chance of success is the same thing as an arguable case at law.¹ 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.

[10] The DESDA limits what I may do. The Appeal Division can overturn a decision of the General Division. But, it can “only [do this] when a person shows that the General Division made an error of the sort listed under subsection 58(1) of the DESDA.”² The Claimant argues that the General Division failed to observe a principle of natural justice under subsection 58(1)(a) of the DESDA. Even so, that does not mean that a breach of natural justice actually occurred.

[11] I do not see any evidence that the General Division failed to observe a principle of natural justice. There is no evidence to suggest that the General Division member failed to give the Claimant adequate notice of the hearing. There is no evidence that there were any issues over the disclosure of documents, the manner in which the General Division conducted the hearing, or any other procedure that affected the Claimant’s right to be heard or to answer the case. As well,

¹ This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

² This is what the Federal Court of Appeal said in *Gittens v. Canada (Attorney General)*, 2019 FCA 256.

there is no issue either that the General Division member was biased or had prejudged the appeal.

[12] The Claimant's arguments do not deal with whether the General Division process was fair.

[13] The Claimant is asking for compassion because of his personal circumstances. But, as I have mentioned, the DESDA limits what I can do. Sympathy alone does not allow me to treat the Claimant's application as if he filed it on time, or for me to find that he is entitled to receive benefits without having to meet all of the requirements under the *Employment Insurance Act*. Members of the Social Security Tribunal do not have any discretionary authority to grant the type of relief that the Claimant is seeking.

[14] I have reviewed the underlying record. I did this to make sure the General Division neither erred in law nor overlooked or misconstrue any important evidence or arguments. I note that the Claimant does not challenge or dispute any of the General Division's factual findings. I see also that the General Division member's summary of the facts is consistent with the evidentiary record and that her analysis is sound and comprehensive. The General Division properly interpreted and applied the *Employment Insurance Act* and then properly applied the law to the facts.

CONCLUSION

[15] As I am not satisfied that the appeal has a reasonable chance of success, the application for leave to appeal is refused.

Janet Lew
Member, Appeal Division

APPLICANT:	T. M., Self-represented
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