Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *E. G. v Canada Employment Insurance Commission*, 2019 SST 1346

Tribunal File Number: AD-18-888

BETWEEN:

E. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: November 14, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, E. G. (Claimant), applied for Employment Insurance benefits. On April 17, 2018, the Canada Employment Insurance Commission (Commission) verbally informed the Claimant that his claim had been denied. He was also sent a letter on April 18, 2018. The Claimant appealed the reconsideration decision to the General Division on August 1, 2018, after the established 30-day deadline.

[3] The General Division found that the extension of time to appeal under section 52(2) of the *Employment Insurance Act* (EI Act) should be refused. It determined that the Claimant had not shown a continuing intention to pursue the appeal, that he had failed to provide a reasonable explanation for the delay, and that he had no arguable case. The General Division found that it did not serve the interests of justice to allow an extension of time, even in the absence of prejudice to the Commission.

[4] The Claimant seeks leave to appeal the General Division decision. He essentially argues that the employer does not respect its employees and that that explains why so many employees are leaving.

[5] On October 15, 2019, the Tribunal asked the Claimant in writing to provide his detailed grounds of appeal in support of the application for leave to appeal under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). The Claimant did not reply to the Tribunal's request.

[6] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

ANALYSIS

[9] Section 58(1) of the DESD Act specifies the only grounds of appeal of a General Division decision. These 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; 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.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits of the case. 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; instead, he must establish that his appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal has a reasonable chance of success.

[12] This means that the Tribunal must be in a position to determine, in accordance with section 58(1) of the DESD Act, whether there is an issue of natural justice, jurisdiction, law, or fact that could justify setting aside the decision under review.

Issue: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[13] In support of his application for leave to appeal, the Claimant argues that the employer does not respect its employees and that that explains why so many employees are leaving.

[14] On April 17, 2018, the Canada Employment Insurance Commission (Commission) verbally informed the Claimant that his claim had been denied. He was also sent a letter on April 18, 2018. The Claimant appealed the reconsideration decision to the General Division on August 1, 2018, after the established 30-day deadline.

[15] The EI Act has given the General Division the discretionary power to extend the time to appeal.

[16] The General Division found that an extension of time under section 52(2) of the EI Act should be refused. It determined that the Claimant had not shown a continuing intention to pursue the appeal, that he had failed to provide a reasonable explanation for the delay, and that he had no arguable case. The General Division found that it did not serve the interests of justice to allow an extension of time, even in the absence of prejudice to the Commission.

[17] For the appeal to be allowed, the Claimant would need 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.

[18] In response to the General Division's request, the Claimant gave no reasonable explanation to justify his delay in filing his notice of appeal and showed no intention of pursing the appeal.

[19] Furthermore, the General Division found that the Claimant has no arguable case. The Commission determined that the Claimant could not receive Employment Insurance benefits because he had voluntarily left his employment without just cause. The Claimant claimed he had been dismissed. However, the evidence shows that the Claimant stopped going to work without warning and that he signed a letter of resignation on June 27, 2017.[1]

[20] It is settled case law that a claimant whose employment ends because they informed their employer of their intention to leave their employment, whether verbally or in writing, or by their actions, is considered to have voluntarily left their employment under the EI Act, even if they later express their desire to keep their employment or change their mind. The Claimant had to go to work, which he did not do. The employer was therefore justified in considering that the Claimant had voluntarily left his employment through his actions.

[21] Given these facts, it did not serve the interests of justice to hear the appeal on the merits.

[22] Despite the Tribunal's specific request, the Claimant has not raised any issue of fact, law, or jurisdiction that could justify setting aside the decision under review.

[23] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no choice but to find that the appeal has no reasonable chance of success.

[1] GD3-29, GD3-30, and GD3-42.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	E. G., self-represented