



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *T. P. v Canada Employment Insurance Commission*, 2019 SST 1389

Tribunal File Number: AD-19-787

BETWEEN:

T. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 4, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, T. P. (Claimant), stopped working because of a shortage of work on February 6, 2019. On May 14, 2019, she applied for Employment Insurance benefits. She argues that she did not file her application earlier because she was waiting to receive her Record of Employment and that her employer delayed until May 10, 2019, to issue it. The Employment Insurance Commission (Commission) refused to grant an antedate to February 3, 2019, and argued that the Claimant had not acted as a reasonable person would have done. The Claimant requested a reconsideration of the decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that waiting for a Record of Employment from an employer does not constitute good cause for delaying in filing a claim for benefits. It found that a reasonable and prudent person would have taken the necessary steps to obtain information from the Commission and file a claim for benefits without delay.

[4] The Claimant now seeks leave to appeal the General Division decision. She argues that her employer advised her to go to the Commission with her Record of Employment. She states that she should not have followed her manager's instructions.

[5] The Tribunal sent the Claimant a letter so that she could explain her grounds of appeal in detail. In her response to the Tribunal, the Claimant stated that she made a mistake by listening to her employer. She asks what will happen to her Employment Insurance claim as of May 14, 2019.

[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 *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; 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.

[10] 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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she 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 grounds of appeal raised by the Claimant 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 may lead to the setting aside of the decision under review.

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

[13] The Claimant argues that her employer advised her to go to the Commission with her Record of Employment. She states that she should not have followed her manager's instructions.

[14] The Claimant stated to the Commission several times that she had delayed in filing her claim because she thought she needed her Record of Employment.¹

[15] Unfortunately for the Claimant, the Federal Court of Appeal has decided on numerous occasions that claimants who delay in filing a claim because their employer failed to issue a Record of Employment or issued a Record of Employment late do not have good cause for the delay.²

[16] As the General Division decided, a reasonable and prudent person in the Claimant's situation would have taken the necessary steps to obtain information from the Commission and file a claim without delay.

[17] Additionally, the Claimant asks the Tribunal what will happen to her Employment Insurance claim as of May 14, 2019. The Claimant is referred to the Commission's May 15, 2019, decision, in which it states that the Claimant had accumulated 512 hours of insurable employment between May 13, 2018, and May 11, 2019. However, she needed 700 hours of insurable employment to be entitled to benefits.³ That decision is not the subject of this appeal.

¹ GD3-17, GD3-18, GD3-20, GD3-22, and GD3-27.

² *Canada (Attorney General) v Chan*, A-185-94; *Canada (Attorney General) v Brace*, 2008 FCA 118; *Canada (Attorney General) v Ouimet*, 2010 FCA 83.

³ GD3-15.

[18] 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.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	T. P., self-represented
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