



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. R. v Canada Employment Insurance Commission*, 2019 SST 1400

Tribunal File Number: AD-19-694

BETWEEN:

S. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 12, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, S. R. (Claimant), applied for and collected regular employment insurance benefits (EI benefits). However, the Respondent, the Canada Employment Insurance Commission (Commission), learned that the Claimant was out of Canada while collecting EI benefits and decided that he was unavailable for work.

[3] The Commission also decided that he had made a false declaration regarding his availability and imposed a penalty and issued a notice of violation. The Commission modified its initial decision at the reconsideration level by letter dated June 19, 2019. The Claimant appealed the reconsideration decision of the Commission to the General Division on August 28, 2019, beyond the 30-day time limit.

[4] The General Division refused the Claimant 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 interest of justice to allow an extension of time.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He reiterates that he was misinformed about the process to appeal and that he moved to another city where he did not receive his mail.

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

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

ISSUE

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

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; 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.

[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 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.

[11] 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.

[12] 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.

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

[13] The Claimant, in his application for leave to appeal, reiterates what he mentioned in his reply to the General Division's request for information. He states that he was misinformed about the process and that he moved to another city where he did not receive his mail.

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

[15] 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, 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, even in the absence of prejudice to the Commission.

[16] 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.

[17] The Tribunal notes that the Commission's last reconsideration decision was sent to the Claimant on June 19, 2019, with an explanation on how to appeal to the General Division. The Claimant filed his appeal to the General Division on August 28, 2019.

[18] The Commission's reconsideration decision was sent to the same address that appears on the General Division's appeal form and the Appeal Division form. The file shows that the Claimant's move occurred prior to January 12, 2018, when he was sent the Request for Information Travel Outside of Canada questionnaire.¹ The General Division therefore correctly determined that the reconsideration decision was deemed communicated to the Claimant on June 29, 2019.

¹ GD3-14, GD3-15, GD3-39.

[19] The issues are whether the Claimant was absent from Canada while collecting EI benefits, whether he was available for work and whether he knowingly made false statements when he failed to report he was outside of Canada.

[20] An investigation revealed that during the benefit period, the claimant was absent from Canada from September 12, 2016, to October 21, 2016. The Claimant did not declare this situation, but did receive EI benefits for the same period.

[21] During an interview by the Commission held on August 22, 2018, the Claimant didn't dispute that he was outside of Canada during that period of benefits but stated that he had to attend job interviews with a potential employer. He stated that he was in financial distress and regretted his decisions of not initially reporting truthfully.

[22] Following the Claimant's request for reconsideration, the Commission applied section 55(1) (e) of the *Employment Insurance Regulations* and provided the Claimant with a seven-day relief from disentitlements applicable under section 18(a) and 37(b) of the *Employment Insurance Act*. The Commission therefore modified the start date of the disentitlements to September 19, 2016. The Commission also modified the monetary penalty from \$537.00 to \$107.40 and rescinded the violation imposed pursuant to section 7.1(4) of the EI Act.

[23] Given these facts, it did not serve the interests of justice to proceed with the Claimant's appeal.

[24] The Tribunal finds that 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. The appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	S. R., Self-represented
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