



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. B. v Canada Employment Insurance Commission*, 2019 SST 1406

Tribunal File Number: AD-19-771

BETWEEN:

R. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 13, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, R. B. (Claimant), applied for employment insurance (EI) benefits on June 18, 2019. He requested that the application be treated as if it was made earlier, on June 30, 2018. The Claimant put forward that he acted as a reasonable person because he believed he was still employed and thought he was going to be paid throughout the entire period of the delay. He submitted a claim for EI benefits as soon as he learned that he would not be paid by his employer.

[3] The Canada Employment Insurance Commission (Commission) refused this request on the basis that the Claimant did not have good cause for the delay. It considered that the Claimant should have contacted the Commission to get information about his rights and obligations under the law, as a reasonable person in his circumstances would have done. The Claimant sought reconsideration of that decision, but the Commission maintained its decision. The Claimant filed an appeal before the General Division of the Tribunal.

[4] The General Division concluded that the Claimant had good cause for the delay but did not qualify at an earlier date since he did not incur an interruption of earnings pursuant to section 14(1) of the *Employment Insurance Regulations* (EI Regulations).

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He argues that the General Division erred when it concluded that he did not incur an interruption of earnings. He submits that the evidence shows that he was never paid by his former employer.

[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 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 argues that the General Division erred when it concluded that he did not incur an interruption of earnings. He submits that the evidence shows that he was never paid by his former employer.

[14] An interruption of earnings occurs where, following a period of employment with an employer, an insured person is laid off or separated from that employment and has a period of seven or more consecutive days during which no work is performed for that employer and in respect of which no earnings that arise from that employment.¹

[15] The undisputed evidence before the General Division shows that the Claimant's last paid day of work was June 30, 2018, and that he continued working full time for the same employer without pay and commission until the end of June 2019. He did not apply for employment insurance benefits sooner since he was hoping to get paid by his employer.²

[16] Although the Tribunal is sympathetic to the Claimant's situation, the Federal Court of Appeal has clearly established that in order to demonstrate an interruption of earnings pursuant to the EI Regulations, a claimant must show that, for a period of at least seven consecutive days, he has not performed any work for his employer, **even if he did not receive earnings for the work.**³ The Claimant therefore does not qualify at an earlier date and the application for benefits cannot be antedated.

[17] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Claimant has not raised a question, the answer to which may lead to the setting aside of the General Division decision under review.

¹ Section 14(1) of the EI Regulations.

² GD3-34.

³ *Enns*, A-559-89, *Duffenais*, A-551-92, *Reny* A-909-96, *Savarie*, A-679-95.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	R. B., Self-represented
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