



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. S. v Canada Employment Insurance Commission*, 2020 SST 14

Tribunal File Number: AD-19-794

BETWEEN:

**M. S.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Decision on Request for Extension of Time and Pierre Lafontaine  
Leave to Appeal by:

Date of Decision: January 10, 2020

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, M. S. (Claimant), worked for a hotel as a phone system operator for about 28 years. Her employer decided to renovate the hotel and laid her off. She applied for employment insurance (EI) benefits on March 4, 2018. The Commission allocated the Claimant's severance pay and told her she could reapply for benefits on November 25, 2018. She waited until April 3, 2019, to call the Commission to ask about her benefits. On April 9, 2019, she asked to backdate her claim to November 25, 2018. She made a renewal application on May 3, 2019. She asks that her application be treated as if it was made earlier, on November 25, 2018. The Commission refused this request. The Claimant appealed to the General Division.

[3] The General Division found that the Claimant showed good cause for part of the delay that is immediately before the claim. It allowed the Claimant's application to be backdated to April 3, 2019.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. In her application for leave to appeal, the Claimant puts forward that the General Division overlooked the fact that she has paid premiums for over 50 years and has never applied for social assistance before.

[5] On December 4, 2019, the Tribunal sent a letter to the Claimant requesting that she explain in detail why he was appealing the decision of the General Division. The Claimant did not reply to the Tribunal.

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

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

## **ISSUES**

[8] Was the application for leave to appeal filed on time?

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

## **ANALYSIS**

[10] 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.

[11] 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 her 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.

[12] 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.

[13] 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.

**Issue 1: Was the application for leave to appeal filed on time?**

[14] No. The General Division decision was sent to the Claimant on August 6, 2019. The Claimant filed her application for leave to appeal on November 8, 2019. The Claimant puts forward that following the General Division decision, she was told to wait 30 days for the Commission to call her in order to settle her situation. She therefore waited for a call that never came. She then filed her application for leave to appeal.

[15] In light of the circumstances in this case, the Tribunal finds that it is in the interest of justice to grant the Claimant an extension of time to apply for leave to appeal. The delay is not excessive, and the extension of time does not prejudice the Commission.<sup>1</sup>

**Issue no 2: Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?**

[16] In support of her application for leave to appeal, the Claimant puts forward that the General Division overlooked the fact that she has paid premiums for over 50 years and has never applied for social assistance before.

[17] The General Division did consider that the Claimant had contributed to the EI program for many years and that she was not familiar with the EI rules because she had never claimed benefits in the past. However, the General Division found that if the Claimant did not understand the EI rules, she should have called the Commission, or gone to a Service Canada office sooner to ask for advice. The General Division nonetheless concluded that the Claimant had showed good cause for part of the delay immediately before the claim after she contacted the Commission. It allowed the Claimant's application to be backdated to April 3, 2019.

[18] In light of the above conclusion of the General Division, and the evidence in support of said conclusion, the Tribunal is not convinced that the appeal has a reasonable chance of success. The Claimant has not set out a reason, which falls into the above-

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<sup>1</sup> *X (Re)*, 2014 FCA 249; *Grewal v Minister of Employment and Immigration*, [1985] 2 FC 263 (FCA).

enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

**CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	M. S., Self-represented
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