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

Citation: *J. B. v Canada Employment Insurance Commission*, 2020 SST 66

Tribunal File Number: AD-20-28

BETWEEN:

J. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Decision on Request for Extension of Time: Pierre Lafontaine

Date of Decision: January 31, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal refuses to grant an extension of time to file an application for permission to appeal.

OVERVIEW

[2] The Applicant, J. B. (Claimant), applied for employment insurance benefits. He made a request for reconsideration, and on June 8, 2017, the Canada Employment Insurance Commission (Commission) issued a reconsideration decision. The Claimant appealed that reconsideration decision to the General Division of Tribunal on March 12, 2019.

[3] The General Division applied section 52(2) of the DESD Act which states that in no case may an appeal be brought more than one year after the reconsideration decision was communicated to the Claimant.

[4] The Applicant now seeks leave to appeal of the General Division's decision to the Appeal Division. He puts forward that he would like that his case be reviewed since he did not quit his job.

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

[6] The Tribunal refuses to grant an extension of time to file an application for permission to appeal.

ISSUES

[7] The Tribunal must decide if it will allow the late application and if it does, it must decide if the appeal has a reasonable chance of success.

ANALYSIS

[8] 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.

[9] 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.

[10] 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.

[11] 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.

Was the application for leave to appeal filed within the legal delay?

[12] No. The Claimant filed his application for leave to appeal on January 10, 2020. The General Division decision was communicated to the Claimant on May 22, 2019.

[13] In deciding whether to grant an extension of time to file an application for leave to appeal to the Appeal Division, the over-riding consideration is whether the interest of justice favors granting the extension.[1]

[14] Relevant factors to consider are whether:

(a) there is an arguable case on appeal;

(b) special circumstances justify the delay in filing the notice of appeal;

(c) the delay is excessive; and

(d) the Commisson will be prejudiced if the extension is granted.

[15] Although the Commission will not be prejudiced by the delay to file the application for leave to appeal, the Tribunal finds that the delay of over seven months before filing the leave to appeal application to be excessive. The Applicant has not raised any special circumstances that prevented him from filing a leave to appeal application during the legal delay.

[16] Furthermore the Tribunal is not convinced that the Claimant has an arguable case or that the appeal has a reasonable chance of success.

[17] The General Division found that the Commission's reconsideration decision was communicated to the Claimant by June 18, 2017. However, the Claimant only filed his appeal to the General Division on March 12, 2019.

[18] Therefore, the General Division correctly applied section 52(2) of the DESD Act which states that in no case may an appeal be brought more than one year after the reconsideration decision was communicated to the Claimant.

[19] Furthermore, in support of his application for permission to appeal, the Claimant puts forward that he did not quit his job. He submits that the job was only for one week.

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[1] *X (Re)*, 2014 FCA 249, *Grewal c Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[20] During a previous Commission interview, the Claimant stated that he went to the supervisor and thanked him for the work and that he had made the decision that it would be better for him to spend his time looking for a better job. He further stated that he had just started collecting benefits and that he didn't want to mess it up by working at a temporary job.

[21] The employer confirmed that the Claimant would have been laid off at the end of the job but that he had decided to quit before the job was completed.

[22] The Federal Court of Appeal has clearly established that, while it is legitimate for a worker to want to improve his life by changing employers or the nature of his work, he cannot expect those who contribute to the employment insurance fund to bear the cost of that legitimate desire. Leaving a job to spend time looking for a better job, therefore deliberately causing the risk of unemployment, is not just cause under the *Employment Insurance Act*.[2]

[23] After considering all the above factors, the Tribunal is not convinced that the interest of justice favors granting the extension.

CONCLUSION

[24] The Tribunal refuses to grant an extension of time to file an application for permission to appeal.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. B., Self-represented

[2] *Langlois v Canada (Attorney general)*, 2008 FCA 18.