



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MC v Canada Employment Insurance Commission*, 2021 SST 150

Tribunal File Number: AD-21-101

BETWEEN:

M. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 12, 2021

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] In 2017, the Respondent, the Canada Employment Insurance Commission (Commission), conducted a review of the Appellant's (Claimant) Employment Insurance (EI) benefits. It determined he was not entitled to the benefits he collected for the period from November 22, 2015, to May 7, 2016, because he had worked and had earnings during these weeks. This decision resulted in an overpayment of benefits. The Commission also imposed a \$3,354.00 penalty to the Claimant and issued a notice of violation classified as very serious.

[3] On December 4, 2020, the Commission received a request for reconsideration from the Claimant. It refused to reconsider the initial decision because the Claimant submitted his reconsideration request late, after the allowable 30-day period. The Commission decided that the Claimant did not meet the criteria for an extension of time to request a reconsideration.

[4] The General Division concluded that the Commission had exercised its discretion in a judicial manner in denying the Claimant's request to extend the 30-day period to make a request for reconsideration of a decision. The General Division found that the Claimant had not given to the Commission a reasonable explanation for the delay and that he had not demonstrated a continuing intention to request reconsideration.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division erred in fact and in law by refusing to follow a decision rendered by the Appeal Division in a similar case.

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

[7] I refuse 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* specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

(a) the General Division: failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division 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 I can grant leave, I need 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.

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

[12] The Claimant, in his application for leave to appeal, submits that the General Division erred in fact and in law by refusing to follow a decision rendered by the Appeal Division in a similar case.

[13] The Claimant relies on an Appeal Division decision where the Commission withdrew a notice of violation following a General Division decision in favor of the claimant on the issue of late reconsideration of the notice of violation. This permitted said claimant to have enough hours to qualify.¹

[14] Unfortunately, for the Claimant, this decision does not help because the General Division, after considering the facts of his case, did not allow his appeal on the issue of late reconsideration. Furthermore, the Commission did not accept to withdraw the Claimant's notice of violation that prevents him from having enough hours to qualify.

[15] I will therefore review the General Division decision on the issue of late reconsideration to determine whether the Claimant's appeal has a reasonable chance of success.

[16] The General Division had to decide whether the Commission exercised its discretion in a judicial manner when it denied the Claimant's request to extend the 30-day reconsideration period.²

[17] The Claimant acknowledged that he did receive the decision letter dated August 25, 2017. The General Division determined that he had received the initial decision on or about September 4, 2017.

¹ *PM v Canada Employment Insurance Commission*, 2020 SST 1072.

² Section 112 of the Employment Insurance Act.

[18] The Claimant filed the reconsideration request on December 4, 2020, more than three (3) years after the Commission communicated its decision. Therefore, the General Division correctly found that the Claimant submitted his reconsideration request late.

[19] The General Division further found that the Commission took into consideration all the factors presented by the Claimant when it exercised its discretion and denied the request for an extension of time.

[20] The Claimant admitted that he did receive the decision letter that indicates that he will “...*be required to work more hours to qualify for Employment Insurance benefits in the future (see attached notice of violation).*” He stated that he did not request reconsideration at that time because he was not concerned about qualifying for EI benefits because he always had employment. He focused on paying off the overpayment and the penalty. The evidence before the General Division confirms that he took no action at that time to request reconsideration.

[21] The evidence also shows that the Claimant is familiar with collecting EI benefits. He established an initial claim for EI benefits effective August 19, 2018, after receiving the notice of violation. He further submitted three subsequent applications for EI benefits since August 25, 2017, for which he was not able to establish a benefit period due to insufficient hours. The Claimant submitted those applications for EI benefits on March 18, 2020, September 28, 2020, and November 14, 2020, respectively. He still waited until December 14, 2020, to file his request for reconsideration.

[22] The General Division considered the Claimant’s explanation that he was late because he was recovering from the X 2016 fire. It also considered his explanation that he was “in treatment” around March 2020.

[23] The General Division determined that Claimant received treatment almost 2 ½ years after the allowable 30-day period to request reconsideration had expired. It also determined that the X fire of 2016 did not explain the long delay of over three years to file the request for reconsideration. Furthermore, the evidence demonstrates that these events did not prevent him from filing applications for EI benefits in 2018 and 2020.

[24] The General Division, after reviewing the Claimant's evidence, determined that the Commission had considered all relevant factors and had properly exercised its discretion when it determined that the Claimant did not have a reasonable explanation for the delay in making the request for reconsideration and that he did not demonstrate a continuing intention to request the reconsideration.

[25] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to the decision that the Commission acted in a judicial manner when it refused to extend the 30 day period.

[26] For the above-mentioned reasons and 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, I find that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	M. C., Self-represented
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