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

Citation: *KX v Canada Employment Insurance Commission*, 2021 SST 195

Tribunal File Number: AD-21-152

BETWEEN:

K. X.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 11, 2021

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal.

OVERVIEW

[2] The Applicant (Claimant) applied for EI benefits on May 26, 2020. During discussions with the Canada Employment Insurance Commission (Commission), he said that he had applied for EI benefits in November 2017. The Commission had no record of an application filed in 2017 by the Claimant. The Commission determined that it could not pay the Claimant benefits based on a 2017 application. The Claimant then asked that the May 26, 2020, application be considered as though it was made on October 22, 2017. The Commission refused the Claimant's request. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed to the General Division.

[3] The General Division determined that the Claimant did not prove that he had filed an application in November 2017. It also determined that he did not act like a reasonable and prudent person in similar circumstances for the entire delay period. The General Division concluded that the Claimant did not show good cause throughout the entire period of the delay in filing his application for benefits.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. In his application for leave to appeal, the Claimant submits that the General Division based its decision on erroneous findings of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[5] I must decide whether the Claimant raised some reviewable error of the General Division upon which the appeal might succeed.

[6] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

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

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:

> (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.

[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 I can grant leave, I must 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 succeed?

[11] In support of his application for leave to appeal, the Claimant submits that he disagrees with the General Division decision. He argues that the General Division

decision contains factual errors and enumerates them. He reiterates the facts that he considers support his position.

[12] The General Division found that the Claimant did not prove that he applied for EI benefits in November 2017. It determined that there were no documents from the Commission showing that the Claimant actually made an application. The General Division also determined that the Claimant did not have a paper trail or a confirmation number to attest of the application made on line. The General Division concluded that the Claimant did not prove that he actually applied for EI benefits in November 2017.

[13] Following this conclusion, the General Division had to decide whether the Claimant's May 2020 application for benefits could be considered as having been made in November 2017.

[14] To establish good cause under section 10(4) of the *Employment Insurance Act* (EI Act), a claimant must be able to show that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the EI Act. As indicated by the General Division, the Claimant had to show that he acted this way for the entire period of the delay. The relevant period is November 2017 to May 26, 2020.

[15] The evidence shows that on June 10, 2019, the Claimant filed an application to antedate benefits for extra weeks in 2013. He had received EI benefits ending in October 2013, as shown by his request for reconsideration. In both the antedate application and the request for reconsideration, he stated: "I did not have the full knowledge of EI benefits until I attended the information session on May 30, 2019 at Service Canada Centre." In both, he stated that was the reason for waiting until June 7, 2019, to file his claim.

[16] The evidence further shows that the Claimant did not make an antedate request about the November 2017 application until September 18, 2020.

[17] The General Division found that the Claimant did not prove good cause because he did not act a reasonable and prudent person in similar circumstances for the entire

delay period. It found that a reasonable and prudent person in the Claimant's circumstances would have made inquiries with the Commission about his rights and obligations regarding his 2017 application following the information session held on May 30, 2019.

[18] The General Division found that the Claimant had previously applied and received benefits and that he was capable of taking steps to communicate with the Commission because he had prepared his EI documents himself and knew how to search for information on relevant websites.

[19] The General Division found that no exceptional circumstances excused the Claimant from the obligation to act as a reasonable and prudent person. Although he has a diagnosed condition, for which he has taken medications for a number of years, the General Division found that he was able to deal with the Commission in 2019 and 2020, and search the internet for EI information. He also was able to complete EI documents, and give detailed reasons for his requests to the Commission.

[20] The evidence before the General Division clearly shows that the Claimant did not have good cause throughout the entire period of the delay, as required by the EI Act. The Claimant should have follow-up on his rights and responsibilities long before September 2020. The factual errors raised by the Claimant do not change this conclusion.

[21] The Claimant, in his leave to appeal application, would essentially like to represent his case to the Appeal Division. Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing, where a party can represent its evidence and hope for a new favorable outcome.

[22] In light of the above conclusions of the General Division, and the evidence in support of said conclusions, I am not convinced that the appeal has a reasonable chance of success. The Claimant has not set out a reason, which falls into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[23] The Tribunal refuses leave to appeal.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	K. X., Self-represented