



Citation: *MK v Canada Employment Insurance Commission*, 2022 SST 674

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 15, 2022
(GE-22-1354)

Tribunal member: Pierre Lafontaine

Decision date: July 27, 2022

File number: AD-22-384

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] When the Applicant (Claimant) lost his job, he applied for regular Employment Insurance (EI) benefits. On August 15, 2008, the Respondent (Commission) notified the Claimant he was disqualified from receiving regular EI benefits due to his misconduct.

[3] On March 25, 2010, the Claimant filed an appeal to the Board of Referees (BOR). He wanted to appeal the Commission's August 15, 2008, decision disqualifying him from regular EI benefits.

[4] On April 28, 2010, the Commission refused to accept the Claimant's appeal to the BOR because it was too late. The Commission sent the Claimant a letter explaining he had 30 days to file an appeal in writing.¹

[5] On March 8, 2022, the Commission received a reconsideration request from the Claimant. The Claimant requested reconsideration of the August 15, 2008, decision disqualifying them from receiving regular EI benefits.² The Commission refused to proceed with the reconsideration request because it had already rendered an Administrative Review Decision on this issue almost twelve years earlier.³ The Claimant appealed to the General Division.

[6] The General Division determined that the law says that in no case may an appeal be brought more than one year after communication of the Commission's reconsideration decision. It concluded that the Claimant's appeal was not filed in time and therefore could not proceed.

¹ See GD3-19.

² See GD3-21.

³ See GD3-46.

[7] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division did not take into account his mental health and severe disability, which explains why he could not pursue his appeal from 2009 to this date.

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

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

Issue

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

Analysis

[11] 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:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[12] 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.

[13] Therefore, before I can grant leave to appeal, 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 succeed?

[14] The Claimant submits that the General Division did not take into account his mental health and severe disability, which explains why he could not pursue his appeal from 2009 to this date.

[15] The General Division had to decide whether the Claimant brought his appeal in time.

[16] On March 25, 2010, the Claimant filed an appeal to the BOR. He wanted to appeal the Commission's August 15, 2008, decision disqualifying them from regular EI benefits. On April 28, 2010, the Commission refused to accept the Claimant's appeal to the BOR because it was too late. The Commission sent the Claimant a letter explaining that he had 30 days to file an appeal in writing. The Claimant never denied receiving that letter.

[17] Effective April 1, 2013, the General Division became seized of all undecided issues relating to Employment Insurance appeals that were previously under jurisdiction of the BOR.⁴

[18] The Claimant submitted his notice of appeal to the General Division on March 12, 2022. This is almost twelve (12) years after the Commission communicated its decision to the Claimant denying his appeal to the BOR because he was too late.

⁴ See section 265(3) of the *Jobs, Growth and Long-term Prosperity Act* of 2012.

[19] An appeal of a decision must be brought to the General Division 30 days after the day on which it is communicated to a claimant. The law allows further time within which an appeal may be brought.⁵

[20] However, the law clearly states that in no case may an appeal be brought to the General Division more than one year after the day on which the Commission's decision is communicated to a claimant.⁶

[21] Furthermore, the law does not allow the Tribunal **any discretion** to extend further than one year the delay to appeal to the General Division, **even for compassionate or humanitarian reasons.**

[22] Unfortunately, for the Claimant, he has not identified any errors of jurisdiction or 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 its decision to apply the law.

[23] 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

[24] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

⁵ Section 52(1) of the DESD Act.

⁶ Section 52(2) of the DESD Act.