



Citation: *DD v Canada Employment Insurance Commission*, 2023 SST 735

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: D. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 13, 2022
(GE-22-707)

Tribunal member: Pierre Lafontaine

Decision date: June 8, 2023

File number: AD-23-315

Decision

[1] I am extending the time to file the application. However, leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Applicant (Claimant) left his job as a meat cutter at a grocery store on August 28, 2022 and applied for EI benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. They decided that he voluntarily left (or chose to quit) his job without just cause, so they couldn't pay him benefits. After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[3] The General Division found that the Claimant voluntarily left his job. It found that the Claimant did not show that he had just cause for leaving his job because he had reasonable alternatives to leaving his job. The General Division concluded that he did not have just cause to leave his job when he did.

[4] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. The Claimant submits that the General Division made an important error of fact.

[5] I must decide whether the Claimant's application to the Appeal Division is late. If it is, I need to decide whether I extend the time for filing the application. If I do extend the time, I need to decide whether the Claimant has raised some reviewable error of the General Division upon which the appeal might succeed.

[6] I am extending the time to file the application. However, I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

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Issues

[8] The issues in this appeal are:

- Was the application to the Appeal Division late?
- Should I extend the time for filing the application?
- Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

Analysis

The application was late

[9] The delay to file an application for leave to appeal is 30 days after the day on which the decision and reasons are communicated in writing to the Claimant.

[10] The General Division rendered a decision on April 13, 2022. It was communicated to the Claimant on April 14, 2022. The Claimant filed an application for leave to appeal on March 27, 2023. The Application is late.

I am extending the time for filing the application

[11] When deciding whether to grant an extension of time, I must consider whether the Claimant has a reasonable explanation for why the application is late.

[12] The Claimant explains that he tried to get help from legal aid and went to see his Member of Parliament. They did not help him. No one wanted to help him to move forward in the appeal process.

[13] I am satisfied that an extension of time to file an application for leave to appeal is warranted in the case at bar. The Claimant has a reasonable explanation for why the application is late.

I am not giving the Claimant permission to appeal

[14] 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:

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.

[15] 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.

[16] 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?

[17] The Claimant submits that he was living in a motel and decided to move in a house closer to work. The rent was cheap, but he needed to do some renovations. He asked his employer for leave but they refused. The employer said they would hire him back. He decided to quit. During the move, he injured himself. When he went back to his employer, they had replaced him.

[18] Whether one had just cause to voluntarily leave an employment depends on whether they, having regard to all the circumstances, had no reasonable alternative to leaving.

[19] The General Division found that the Claimant voluntarily left his job. It found that the Claimant did not show that he had just cause for leaving his job because he had reasonable alternatives to leaving his job. He could have done the renovations outside of his work hours. This would have taken him much more time, but he would have kept his job. The General Division also found that he could have talked to his employer regarding COVID-19 issues prior to leaving his employment. It concluded that he did not have just cause to leave his job when he did.

[20] The preponderant evidence shows that the Claimant made a personal choice to end his employment, which perhaps was a good personal choice for him at that time. However, a good personal choice does not establish just cause for leaving employment under the law.

[21] I see no reviewable error made by the General Division. The General Division's conclusion is supported by the evidence and case law. Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new opportunity to re-present evidence to obtain a different outcome.

[22] 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

[23] I am extending the time to file the application. However, leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division