



Citation: *DY v Canada Employment Insurance Commission*, 2024 SST 801

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. Y.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 27, 2024
(GE-24-732)

Tribunal member: Pierre Lafontaine

Decision date: July 11, 2024

File number: AD-24-441

Decision

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

Overview

[2] The Applicant (Claimant) applied for regular benefits on May 13, 2017. On September 18, 2018, a letter was sent to him. The Respondent (Commission) questioned the Claimant on his 2017 claim for benefits.

[3] On February 7, 2019, the Commission decided the Claimant could not be paid benefits starting July 30, 2017. This was because he was found to have voluntarily left his employment without just cause. Other sanctions were added as well. This involved monetary penalties and notice of violation. The decision was communicated to the Claimant in a letter dated February 7, 2019.

[4] On February 1st, 2023, the Commission received a request for reconsideration from the Claimant. On June 22, 2023, the Commission decided his request for reconsideration was late and refused to reconsider the decision dated February 7, 2019. The Claimant appealed to the General Division of the Tribunal.

[5] The General Division determined that the Claimant was late in requesting reconsideration of the decision dated February 7, 2019. It found that the Commission did not act judicially when it refused the request for reconsideration. Nonetheless, the General Division refused to grant the Claimant an extension of time to make a request for reconsideration.

[6] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that when he contacted the *Canada Revenue Agency* (CRA) about debt, he was not aware it was mostly from the voluntary leaving job. He submits that he was terminated from his job and the former employer cannot affirm or deny this. The Claimant submits that the Commission does not suffer a prejudice if he is granted an extension of time because the employer must keep his records for six years.

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

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

Issue

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

Analysis

[10] The law specifies the only grounds of appeal of a General Division decision.¹ 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.

[11] 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.

¹ Section 58(1) of the *Department of Employment and Social Development Act*.

[12] 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.

I am not granting the Claimant leave (permission) to appeal

[13] The Claimant submits that when he contacted the CRA about debt, he was not aware it was mostly from the voluntary leaving job. He submits that he was terminated from his job and the former employer cannot affirm or deny this. The Claimant submits that the Commission does not suffer a prejudice if he is granted an extension of time because the employer must keep his records for six years.

[14] 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

[15] The General Division correctly indicated that the Commission may allow a longer period to make a request for reconsideration of a decision if the Commission is satisfied that there is a reasonable explanation for requesting a longer period and the person has demonstrated a continuing intention to request a reconsideration.³

[16] The Commission must also be satisfied that the request for reconsideration has a reasonable chance of success, and that no prejudice would be caused to the Commission or a party by allowing a longer period to make the request, if the request for reconsideration is made after the 365-day period after the day on which the decision was communicated to the person.⁴

[17] This means that a claimant **must meet all four conditions** for the Commission to accept the late reconsideration request when the request is more than 365 days late.

² Section 112 of the *Employment Insurance Act*.

³ See article 1(1) of the *Reconsideration Request Regulations*.

⁴ See article 1(2) (a) of the *Reconsideration Request Regulations*.

[18] The General Division correctly stated that when the Commission refuses a late request for reconsideration, it must show that it used its discretionary powers properly.⁵

[19] The General Division determined that the Claimant received the decision dated February 7, 2019, at the latest February 18, 2019. The Claimant filed his reconsideration request on February 1st, 2023, almost four (4) years after the Commission communicated to him its initial decision. The General Division found that the reconsideration request was late by more than 365 days. Because of this, it correctly determined that all four factors had to be met.

[20] The General Division found that the Commission did not act judicially when it did not consider all four factors to decide whether an extension of time should be granted. Nevertheless, it concluded that the Claimant did not have a reasonable explanation for the delay and that he had not showed a continued intention to seek reconsideration of the decision dated February 7, 2019. It refused to grant an extension of time to make a request for reconsideration.

[21] The General Division considered that the Claimant was sent a letter which explained the overpayment and did not open it. It considered that, although he was going through very hard times, he was able to send a breakdown of his finances to CRA. He was able to continue working. It found that if the Claimant was able to do all of that, he could have taken the step to find out what caused the overpayment and request a reconsideration if he disagreed with the Commission's decision.

[22] The General Division found that the Claimant did not demonstrate a continuing intention to request the reconsideration. It considered that he was aware of the balance owing. He negotiated repayment terms with the CRA and hoped to pay the balance in full through the inheritance he expected. He acted only when there was a threat to garnish his wages. The General Division found that the Claimant did not show that he always wanted to ask for reconsideration.

⁵ See *Canada (Attorney General) v Gagnon*, 2004 FCA 351.

[23] The Claimant submits that his request for reconsideration of the decision dated February 7, 2019, has a reasonable chance of success and that the Commission would not suffer a prejudice if the extension of time was granted.

[24] Unfortunately, for the Claimant, even if this is true, he does not meet all four conditions required by law to allow an extension of time to request reconsideration. He did not have a reasonable explanation for the delay and did not demonstrate a continued intention to seek reconsideration of the decision dated February 7, 2019.

[25] I see no reviewable error made by the General Division. It properly applied the law to the facts of the case when it refused to extend the 30-day reconsideration period.

[26] 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.

[27] 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

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

Pierre Lafontaine
Member, Appeal Division