

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20190530**

**Docket: A-389-17**

**Citation: 2019 FCA 166**

**CORAM: GAUTHIER J.A.  
WEBB J.A.  
RIVOALEN J.A.**

**BETWEEN:**

**NORMA SHERWOOD**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Toronto, Ontario, on May 22, 2019.

Judgment delivered at Ottawa, Ontario, on May 30, 2019.

**REASONS FOR JUDGMENT BY:**

**RIVOALEN J.A.**

**CONCURRED IN BY:**

**GAUTHIER J.A.  
WEBB J.A.**

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**REASONS FOR JUDGMENT**

**RIVOALEN J.A.**

[1] Norma Sherwood appeals from the Federal Court's decision rendered by Justice Gleeson (2017 FC 998) dismissing her application for judicial review of the decision of the Social Security Tribunal (Appeal Division) (AD-SST) rendered on March 27, 2015. This appeal focuses on the decision of the AD-SST refusing her leave to appeal the decision of the Social Security Tribunal (General Division) (GD-SST).

[2] The essential background facts of this case were succinctly summarized by the Judge in paragraphs 4 to 11 of his Judgment and Reasons. I will repeat some of the more material facts to provide context to this decision.

[3] In September 2003, Ms. Sherwood was laid-off and given a severance package after 18 years of employment with Symcor. In November 2003, she was diagnosed with a bone tumor in her left hand, requiring her to undergo multiple surgeries. In July 2004, she was approved a 15-week period of sick benefits antedated to February 16, 2004. Ms. Sherwood says that thereafter she attended at a Service Canada centre on two occasions to inquire about benefits and was given the wrong information by its employees. In the following years, Ms. Sherwood retrained and obtained different employment. In 2011, she applied for regular employment insurance benefits arising from her most recent employment but had insufficient hours to qualify.

[4] In 2014, over ten years after her employment with Symcor was terminated, Ms. Sherwood applied under subsection 10(4) of the *Employment Insurance Act*, SC, 1985, c. 23 (the *EI Act*) for regular employment insurance benefits antedated to 2004. The GD-SST denied her claim because good cause for the delay in making the claim had not been shown. Her request for leave to appeal that decision was denied by the AD-SST because it found that she had not provided reasons which fell within the grounds of appeal and it was not satisfied that the appeal had a reasonable chance of success.

[5] This Court certainly has sympathy for Ms. Sherwood, as she undoubtedly experienced challenging and difficult times after she was laid-off in 2003. However, on the record that was

before the AD-SST and considering the narrow issue before us, I am unable to find in her favour. For the following reasons, I would dismiss the appeal, without costs.

[6] In an appeal of a judgment concerning a judicial review application, the role of this Court is to determine whether the Judge identified the appropriate standard of review and applied it correctly (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559, at paras. 45-47).

[7] The Judge correctly identified and applied the standard of review of reasonableness. He thoroughly and thoughtfully reviewed the evidence and arguments advanced by Ms. Sherwood. He was unable to identify any error on the part of the AD-SST warranting judicial intervention. I find that the Judge made no error in his review and analysis of the AD-SST decision.

[8] In order to understand what was required of Ms. Sherwood before the AD-SST, it is important to underscore the appeal mechanism of decisions of the GD-SST. In accordance with subsection 56(1) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34 (the *DESDA*), “[a]n appeal to the Appeal Division may only be brought if leave to appeal is granted.” As mentioned previously, the decision of the AD-SST under review relates to Ms. Sherwood’s request for leave to appeal, not to the merits of her claim. Pursuant to subsection 58(2) of the *DESDA*, the role of the AD-SST at the leave stage is to decide whether the appeal has a reasonable chance of success. Subsection 58(1) of the *DESDA* states that the only grounds of appeal are the following:

58(1) The only grounds of appeal are that	58(1) Les seuls moyens d'appel sont les suivants :
(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;	a) la division générale n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;
(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or	b) elle a rendu une décision entachée d'une erreur de droit, que l'erreur ressorte ou non à la lecture du dossier;
(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.	c) elle a fondé sa décision sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

[9] The requirements to make a claim for benefits after the time prescribed for making the claim are set out in subsection 10(5) of the *EI Act*, and have been considered extensively in the jurisprudence of this Court. In *Kangar v. Canada (Attorney General)*, 2013 FCA 157, 446 N.R. 337, this Court noted:

[1] Under the *Employment Insurance Act*, S.C. 1996, c. 23, a claim for benefits may be made after the time prescribed for making the claim if a claimant meets the requirements set out in subsection 10(5) of the Act. To do so, a claimant must show that there was good cause for the delay in making the claim, and that the good cause existed throughout the entire period of delay. The jurisprudence of this Court is settled that to establish good cause for delay a claimant must demonstrate that she did what a reasonable person in her situation would have done to satisfy herself as to her rights and obligations under the Act. See, for example, *Canada (Attorney General) v. Albrecht*, [1985] 1 F.C. 710.

[2] Put another way, a reasonable person is expected to take reasonably prompt steps to determine her entitlement to benefits, and ignorance of the law and good faith have been held not to amount to good cause (*Canada (Attorney General) v. Carry*, 2005 FCA 367 (CanLII), 344 N.R. 142). [My emphasis.]

[10] Before the GD-SST, Ms. Sherwood did not show that there was good cause for the delay in making the claim, and that the good cause existed throughout the entire ten year period of delay.

[11] Before the AD-SST, Ms. Sherwood did not raise any errors in the decision of the GD-SST other than its conclusion. Her evidence and arguments presented were insufficient to satisfy the AD-SST that any one of the enumerated grounds of appeal had a reasonable chance of success.

[12] One can certainly accept, as the AD-SST did, that Ms. Sherwood was stressed and confused, having been laid-off from her employment of 18 years and then, immediately thereafter, confronting a serious health crisis. Her major complaint to the AD-SST, as it was before both the GD-SST and this Court, was of being misinformed of her rights to regular employment insurance benefits and being misled by employees of Service Canada. Ms. Sherwood was basically asking the AD-SST, as she asked the Federal Court and this Court, to re-evaluate and reweigh the evidence that was put before the GD-SST. That is not the role of this Court.

[13] I am unable to identify any error on the part of the AD-SST that would warrant our intervention.

[14] As set out earlier, I fully appreciate how significant this decision is for Ms. Sherwood. Despite this, I must agree with the Federal Court that it was reasonable for the AD-SST to refuse leave to appeal.

[15] In conclusion, I would dismiss the appeal, without costs.

"Marianne Rivoalen"

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J.A.

"I agree.  
Johanne Gauthier J.A."

"I agree.  
Wyman W. Webb J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-389-17

**STYLE OF CAUSE:** NORMA SHERWOOD v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** MAY 22, 2019

**REASONS FOR JUDGMENT BY:** RIVOALEN J.A.

**CONCURRED IN BY:** GAUTHIER J.A.  
WEBB J.A.

**DATED:** MAY 30, 2019

**APPEARANCES:**

Norma Sherwood SELF-REPRESENTED

Penny Brady FOR THE RESPONDENT

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