Citation: *D. B. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 31

Appeal #: GE-13-847

BETWEEN:

D. B.

Appellant
Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance – Summary Dismissal

SOCIAL SECURITY TRIBUNAL MEMBER: Alyssa Yufe

DATE OF DECISION: April 23, 2014

DECISION: The appeal is summarily dismissed.

DECISION

[1] The Tribunal finds that the appeal has no reasonable chance of success; therefore the appeal is summarily dismissed.

INTRODUCTION

[2] The Appellant filed an initial claim for benefits on May 14, 2013 (Exhibit GD3-2 to GD3-16).

[3] The Canada Employment Insurance Commission (the "Commission") decided on July 19, 2013, that the Appellant had no hours of insurable employment between November 20, 2011 and May 11, 2013 and that based on the regional rate of unemployment, he needed 595 hours to qualify for benefits.

[4] The Appellant requested reconsideration of the Commission's decision on August 5, 2013. On August 21, 2013, the Commission reconsidered its original decision and decided to maintain it (GD3-28).

[5] The Appellant filed an appeal to the Tribunal on September 12, 2013 (GD2). Pursuant to section 32 of the *Social Security Tribunal Regulations*, the Tribunal referred a question to the Commission for investigation and report on November 27, 2013. On December 20, 2013, the Commission provided its response.

[6] On February 24, 2014, the Tribunal sent the parties the Notice of Intention to Summarily Dismiss. The Appellant did not provide any additional submissions notwithstanding that he was given an opportunity to do so until March 27, 2014.

ISSUE(S)

[7] The Tribunal must decide whether the appeal should be summarily dismissed.

THE LAW

[8] Subsection 53(1) of the *Department of Employment and Social Development Act* ("DESD Act") states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[9] Section 22 of the *Social Security Tribunal Regulations* (the "Regulations") states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[10] Subsection 7(2) of the *Employment Insurance Act* S.C. 1996, c. 23 (the "Act") stipulates that in order to qualify for employment insurance benefits, an insured person must (a) have experienced an interruption of earnings from employment, and (b) must also have acquired, in his/her qualifying period, at least the number of hours of insurable employment set out in the table within that subsection, in relation to the regional rate of unemployment where the person normally resides.

EVIDENCE

[11] The Appellant applied for employment insurance benefits on May 14, 2013. In his application for benefits, he advised that he worked at the employer "IE Wire" (the "Employer") from February 1, 1998, to April 5, 2013 as a warehouse and distribution centre manager. He was unable to work due to a medical reason from November 21, 2011 to April 5, 2013. (On line Application & Questionnaire, Exhibit GD3-2 to 16)

[12] According to the Record of Employment at Exhibit GD3-17, "ROE" dated May 24, 2013, the Appellant worked at the Employer from February 1, 1998 to November 12, 2011 as a "DC lead". The Appellant accumulated 2,160 insurable hours. The reason for issuing the ROE is listed as code "K". The Comment box provides that the position was abolished and that the Appellant last worked for the employer in 2011 and was on sick

leave since then. He was terminated on April 5, 2013 and received pay en lieu of notice. (ROE, Exhibit GD3-17).

[13] A doctor's note at GD3-18 is dated November 8, 2011 and marked received by the "CSC Laval" on November 15, 2011. Another one at GD3-19 is dated February 7, 2012 and is marked received on February 9, 2012.

[14] On July 10, 2013, the Commission noted that there were two ROES filed for the same period and that one of them was an amended version. His last day worked was actually on the November 12, 2011 and he was on disability insurance from November 13, 2011 to April 5, 2013. His position was abolished. He did not return on a progressive return (GD3-20).

[15] In his Request for Reconsideration and Notice of Appeal, the Appellant advised that when he was ready to return to work in February 2013, he was advised that his position was abolished and that they no longer had a job for him (GD2 and GD3-23 to 25).

[16] On August 21, 2013, the Commission noted that it advised the Appellant as follows: the record of employment E26260865 was already used to establish a claim starting November 20, 2011 on which the Appellant received 15 weeks of special benefits (medical); The last renewable week was November 11, 2012. The Appellant received long term disability until April 5, 2013. There is no possibility to extend the benefit period beyond November 11, 2012. Between the last day worked on November 12, 2011 and the beginning of the new claim on May 12, 2013, the Appellant had worked 0 hours. That's why the Commission cannot establish a new claim.

[17] The Appellant was informed that the Commission was maintaining its decision (GD3-27).

[18] GD3-29 to 31 shows that the Monthly Seasonal Adjusted Unemployment Rate for the region of Montreal was 8.1% between May 12 and June 8, 2013.

Additional Evidence: Request pursuant to Section 32 of the Regulations.

[19] Pursuant to a request made by the Tribunal under section 32 of the Regulations, regarding whether the Commission considered a qualifying period extension pursuant to paragraph 8(2)(a) and subsection 8(7) of the Act, the Commission reported as follows: "In the initial claim, the claimant mentioned being unable to work from November 21, 2011 to April 5, 2013 (page GD3-10). The reference period was therefore extended of [sic] 25 weeks. Consequently, the duration of the reference period is November 20, 2011 to May 11, 2013 (77 weeks). According to the record, the claimant did not accumulate any insurable hours during this period since his position was abolishes [sic] November 12, 2011 (page GD3-17)…The Commission has accordingly, extended the qualifying period by the maximum pursuant to subsections 8(2)(a) and 8(7) of the Act."

SUBMISSIONS

[20] The Appellant submitted that:

a) When he tried to return to work, his position had been abolished (GD-3 and GD2); and,

b) He worked for 16 years and he paid all of his employment insurance premiums and that he should not be penalized on account of his health issues (GD3-26 and GD-2).

[21] The Respondent submitted that:

a) the Appellant failed to qualify to receive employment insurance benefits pursuant to subsection 7(2) of the E.I Act because he required 595 hours of insurable employment in his qualifying period between November 20, 2011 and May 11, 2013 and he had accumulated only 0 hours (GD4-1);

b) The Appellant received long term disability from March 18, 2012 until April 5, 2013 (GD3-10). After reviewing this claim, the Commission concluded there was

no possibility to extend the benefit period beyond November 11, 2012 (Employment Insurance Act 10(13)). (GD4-2)

c) The requirements under subsection 7(2) of the Act do not allow any discrepancy and provide no discretion (*Levesque* 2001 FCA 304) (GD4-3);

d) Subsection 8(1) of the Act provides for two possible qualifying periods. It specifically requires that the shorter of the two possibilities be chosen as the applicable qualifying period (*Long* 2011 FCA 99) (GD4-3);

e) Hours which are accumulated outside the qualifying period cannot be used to qualify the claimant for benefits (*Haile* 2008 FCA 193) (GD4-3);

f) the CRA has exclusive jurisdiction to determine the number of hours an insured person has had in insurable employment pursuant to section 122 of the Act. (*Didiodato* 2002 FCA 345) (GD4-3);

g) The reference period was extended by 25 weeks for a total of 77 weeks, from November 20, 2011 to May 1, 2013 because the Appellant was unable to work (GD5 and GD6); and,

h) The qualifying period was extended by the maximum amount permitted in paragraph 8(2)(a) and 8(7) of the Act (GD5 and GD6).

ANALYSIS

[22] In compliance with section 22 of the Regulations, the Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions, but no additional submissions were received.

[23] The Tribunal notes that the Appellant articulated clearly his arguments and position regarding the Commission's determination that he did not have sufficient insurable hours of employment in his qualifying period, in his Request for Reconsideration and Notice of Appeal.

[24] The Tribunal finds that the Commission took the Appellant's particular predicament and circumstances into account when it extended his qualifying period by the maximum allowable under the Act pursuant to paragraph 8(2)(a) and subsection 8(7) of the Act on account of his illness (GD5 and GD6).

[25] The Tribunal has reviewed the file and has concluded that the Appellant's appeal with respect to the sufficiency of the insurable hours would have no reasonable chance of success.

[26] The Tribunal is mindful that subsection 53(1) of the DESD Act states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[27] The Respondent submitted that where the regional rate of unemployment is 8.1%, paragraph 7(2)(b) of the Act requires that the Appellant have 595 hours of insurable employment to qualify. He had none. The Appellant does not appear to dispute the number of hours that the Commission has calculated in his qualifying period.

[28] Rather, the Appellant argued that he worked for the same employer since 1998 and that he should not be penalized on account of his illness (GD3 and GD2).

[29] The Tribunal notes that none of the Appellant's arguments regarding his lack of hours have a reasonable chance of success. The law is clear that neither the Commission nor the Tribunal or Court has authority to exempt a claimant from the qualifying provisions of the Act (insurable hours), no matter how sympathetic or unusual the circumstances. (*Levesque* 2001 FCA 304; *Pannu* A-147-03).

[30] The Tribunal finds that the Appellant's submission, that his long work history and contributions to the employment insurance system should be taken into account in calculating the number of hours required and the number of hours accumulated, also has no reasonable chance of success. This is because while the Appellant's work history as he described it and as it appears on his ROE is commendable, the law is clear that past

hours, outside of the qualifying period cannot be used to qualify the Appellant for benefits (*Haile* 2008 FCA 193).

[31] For all of the foregoing reasons, the Tribunal concludes that the appeal has no reasonable chance of success.

CONCLUSION

[32] The appeal is summarily dismissed.

Alyssa Yufe
Member, General Division

Date: April 23, 2014