Citation: *P. S. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 32

Appeal #: GE-13-1690

BETWEEN:

P. S.

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 June 25, 2013 (Exhibit GD3-2 to GD3-11).

[3] The Canada Employment Insurance Commission (the "Commission") decided The Commission decided on September 12, 2013, that it was unable to pay the Appellant employment insurance benefits because he had a previous violation, regarding which he had been notified. The Appellant required 893 hours of insurable employment between June 24, 2012 and June 22, 2013 and he only had 799 hours of insurable employment (GD3-19).

[4] The Appellant requested reconsideration of the Commission's decision on September 20, 2013. On October 9, 2013 (GD3-20), the Commission reconsidered its original decision and decided to maintain it (GD3-25).

[5] The Appellant filed an appeal to the Tribunal on October 16, 2013 (GD2).

[6] On February 27, 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 26, 2014.

ISSUE(S)

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

THE LAW

Summary Dismissal

[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.

Increase in the Amount of Hours Required:

[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.

[11] Section 7.1 provides as follows:

7.1 (1) The number of hours that an insured person, other than a new entrant or re-entrant to the labour force, requires under section 7 to qualify for benefits is increased to the number provided in the following table if the insured person accumulates one or more violations in the 260 weeks before making their initial claim for benefit.

[12] TABLE / TABLEAU

Regional Rate of Unemployment / Taux régional de chômage	Violation minor / mineure	serious / grave	very serious / très grave	subsequent / subséquente
6% and under/ 6 % et moins	875	1050	1225	1400
more than 6% but not more than 7%/ plus de 6 % mais au plus 7 %	831	998	1164	1330
more than 7% but not more than 8%/ plus de 7 % mais au plus 8 %	788	945	1103	1260
more than 8% but not more than 9%/ plus de 8 % mais au plus 9 %	744	893	1041	1190
more than 9% but not more than 10%/ plus de 9 % mais au plus 10 %	700	840	980	1120
more than 10% but not more than 11%/ plus de 10 % mais au plus 11 %	656	788	919	1050
more than 11% but not more than 12%/ plus de 11 % mais au plus 12 %	613	735	858	980
more than 12% but not more than 13%/ plus de 12 % mais au plus 13 %	569	683	796	910
more than 13%/ plus de 13 %	525	630	735	840

(2) The number of hours that an insured person who is a new entrant or re-entrant to the labour force requires under section 7 to qualify for benefits is increased if, in the 260 weeks before making their initial claim for benefit, the person accumulates

(*a*) a minor violation, in which case the number of required hours is increased to 1,138 hours;

(*b*) a serious violation, in which case the number of required hours is increased to 1,365 hours; or

(*c*) a very serious violation, in which case the number of required hours is increased to 1,400 hours.

(2.1) A violation accumulated by an individual under section 152.07 is deemed to be a violation accumulated by the individual under this section on the day on which the notice of violation was given to the individual.

(3) A violation may not be taken into account under subsection (1) or (2) in more than two initial claims for benefits under this Act by an individual if the individual who accumulated the violation qualified for benefits in each of those two initial claims, taking into account subsection (1) or (2), subparagraph 152.07(1)(*d*)(ii) or regulations made under Part VIII, as the case may be.

(4) An insured person accumulates a violation if in any of the following circumstances the Commission issues a notice of violation to the person:

(*a*) one or more penalties are imposed on the person under section 38, 39, 41.1 or 65.1, as a result of acts or omissions mentioned in section 38, 39 or 65.1;

(*b*) the person is found guilty of one or more offences under section 135 or 136 as a result of acts or omissions mentioned in those sections; or

(*c*) the person is found guilty of one or more offences under the *Criminal Code* as a result of acts or omissions relating to the application of this Act.

(5) Except for violations for which a warning was imposed, each violation is classified as a minor, serious, very serious or subsequent violation as follows:

(*a*) if the value of the violation is

(i) less than $1,000, it is a minor violation,

(ii) $1,000 or more, but less than $5,000, it is a serious violation, or

(iii) $5,000 or more, it is a very serious violation; and

(*b*) if the notice of violation is issued within 260 weeks after the person accumulates another violation, it is a subsequent violation, even if the acts or omissions on which it is based occurred before the person accumulated the other violation.

(6) The value of a violation is the total of

(*a*) the amount of the overpayment of benefits resulting from the acts or omissions on which the violation is based, and

(*b*) if the claimant is disqualified or disentitled from receiving benefits, or the act or omission on which the violation is based relates to qualification requirements under section 7, the amount determined, subject to subsection (7), by multiplying the claimant's weekly rate of benefit by the average number of weeks of regular benefits, as determined under the regulations.

(7) The maximum amount to be determined under paragraph (6)(*b*) is the amount of benefits that could have been paid to the claimant if the claimant had not been disentitled or disqualified or had met the qualification requirements under section 7.

EVIDENCE

[13] The Appellant worked at the employer "VDS" ("Employer 2") from April 15, 2013, to June 20, 2013 (GD3-2 to 11). The Appellant's application for employment insurance benefits was received on June 25, 2013 (GD3-10).

[14] According to the Record of Employment at Exhibit GD3-12, "ROE1" dated October 23, 2012, the Appellant worked at the employer "PBG" ("Employer 1") from February 20, 2012 to October 12, 2012 as an "Adj. Administratif". The Appellant accumulated 1,020 insurable hours. The reason for issuing the ROE is listed as code "A" (GD3-12).

[15] According to the Record of Employment at Exhibit GD3-13, "ROE2" dated April 5, 2013, the Appellant worked at the Employer 1 from March 11, 2013 to March 29, 2013 as an "Adj. Administratif". The Appellant accumulated 90 insurable hours. The reason for issuing the ROE is listed as code "A" (GD3-13).

[16] According to the Record of Employment at Exhibit GD3-14, "ROE3" dated June 21, 2013, the Appellant worked at the Employer 2 from April 15, 2013 to June 20, 2013.

The Appellant accumulated 228.60 insurable hours. The reason for issuing the ROE is listed as code "M" (GD3-14).

[17] On May 30, 2011, the Commission decided that it could not pay the Appellant employment insurance benefits from January 6, 2010 to January 12, 2010 and from February 12, 2010 to February 26, 2010 on the grounds that he was not in Canada and was not on vacation and was not available. A penalty in the amount of $671.00 for 3 false representations was imposed. A Notice of Violation for a serious violation was also issued (GD3-15 to 17).

[18] GD3-18, shows that the regional rate of unemployment for Montreal was 8.3% from June 9, 2013 and July 6, 2013.

[19] On October 9, 2013, the Commission noted that the employer advised as follows: The Appellant worked 30 hours a week plus commissions. He received commissions according to the number of files, with which he dealt. That is the reason why his salary varied (GD3-23).

[20] On October 9, 2013, the Commission noted that the Appellant advised as follows: The Appellant argued that it was unfair and the Commission advised that the Appellant had already appealed to the Board of Referees regarding the violation and that it was rejected and then he went to the Umpire, which maintained the Board of Referee's decision. The Commission submitted his claim for a recalculation and his hours were still insufficient to establish a claim (GD3-24).

SUBMISSIONS

[21] The Claimant submitted that:

a) He was penalized because he made a mistake completing his phone claim (GD-3-20);

b) He was still penalized even if he was available. He left Canada twice. He was only not able to come back to Canada right away the time that he was away assisting his daughter who was in poor health (GD-3-20);

c) He only has 2 months left to pay back the amounts, which he owes because of his prior incident (GD-3-20);

d) This is unfair. He worked all of his life and paid his bills like a good citizen and now he is being treated like a thief, liar or fraudster. He has only had to use the system twice in the 42 years or 45 years that he has been employed (GD-3-20, GD2); and,

e) He worked recently at Employer 2 at a minimal salary and he is searching vigorously for any kind of employment (GD-3-20).

[22] The Respondent submitted that:

a) Subsection 7.1(1) of the Act specifies that an increase to a claimant's entrance requirements will result if he has accumulated a violation within the 260 weeks prior to filing his claim for employment insurance benefits. Subsection 7.1(4) of the Act defines what is meant by a violation (GD4-1);

b) Evidence in the claimant's file shows that on May 30, 2011, the Commission issued a serious violation to the claimant in accordance with subsection 7.1(4) of the Act (Page GD3-17) (GD4-1). The Appellant has already appealed the Commission's decision to issue the Notice of Violation to the Board of Referees and to the Umpire (GD4-3);

c) Subsection 7.1(1) of the Act refers to insured persons who are not new entrants or reentrants to the labour force. Where one of these insured persons accumulates one or more violations in the 260 weeks before making their initial claim for employment insurance benefits, the number of hours that person requires to qualify for benefits is increased according to the table in that subsection (GD4-3);

d) The only exception to Section 7.1 is found in subsection (3), which says that, where a claimant qualified for employment insurance benefits with the increased number of hours twice before, the increased entrance requirement cannot be applied to a third claim for employment insurance benefits (GD4-3);

e) The Appellant was not a new entrant or re-entrant because in accordance with subsection 7(4) of the Act the claimant demonstrated that he had at least 490 hours of labour force attachment in the 52 weeks preceding the qualifying period. Since the claimant was issued a violation within the 260 weeks preceding this claim, the Commission invoked subsection 7.1(1) of the Act rather than subsection 7(2) of the Act to determine whether the claimant had a sufficient number of insurable hours to qualify for employment insurance benefits (GD4-4);

f) Pursuant to the Table in subsection 7.1(1) of the Act to qualify to receive employment insurance benefits was 893 hours because the claimant accumulated a serious violation on May 30, 2011 (Page GD3-17) and he resides in an economic region with an unemployment rate of 8.3% (Page GD3-18). As the claimant had accumulated only 799 hours of insurable employment in his qualifying period from June 24, 2012 to June 22, 2013 he had insufficient insured hours to qualify for benefits pursuant to section 7.1 of the Act. (GD4-4);

g) The Appellant does not meet the exception in subsection (3) because the Appellant has never qualified since this notice of violation was issued on May 30,

2011 (GD4-4); The 260-week period commences on the date the claimant was issued a notice of violation by the Commission, not from the date the claimant is notified of the violation (*Savard* 2006 FCA 327) (GD4-4);

h) the requirements under section 7 of the Act do not allow any discrepancy and provide no discretion.(Levesque, 2001 FCA 304) (GD4-4);

ANALYSIS

[23] 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.

[24] 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.

[25] The Tribunal has reviewed the file and has concluded that the Appellant's appeal with respect to the sufficiency of the insurable hours and the effect of the application of the notice of violation or the notice of violation itself would have no reasonable chance of success for the following reasons:

[26] The Respondent submitted that where the regional rate of unemployment is 8.3%, the Table at subsection 7(1)(1) of the Act requires that the Appellant have 893 hours of insurable employment to qualify. He had 799. The Appellant does not appear to dispute the number of hours that the Commission has calculated in his qualifying period. He is only disputing the issuance of the notice of violation itself and its subsequent application to his current claim for benefits.

[27] The Respondent submitted that the Appellant has already appealed the decision to issue the notice of violation to the Board of Referees and Umpire without success (GD4-3);

[28] Once a notice of violation is issued, and a claimant's right to appeal the decision to issue the notice of violation has been exhausted, the Commission, the Tribunal, or reviewing court only has discretion to refuse to apply the notice of violation in subsequent claims within the 260 week period where a claimant has

qualified for benefits with the increased hour requirement twice before (subsection 7.1(3) of the Act).

[29] The Appellant did not submit that the notice of violation was issued outside of the 260 week period from the date of the notice of violation (Szeczech 2004 FCA 366) or that he has qualified twice before with the increased hours requirement on account of the notice of violation (subsection 7.1(3) of the Act).

[30] In this regard, the Tribunal has no jurisdiction to consider the Appellant's submissions regarding whether or not it was appropriate for the Commission to have exercised its discretion to issue the notice of violation in the first place or to consider whether the Appellant's reasons for being outside of the country could be validated by the legislation (*Lapointe* 2011 FCA 66, *Read* A-371-93, *Hamilton* A-175-87).

[31] 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).

[32] The Tribunal notes that none of the Appellant's arguments regarding the notice of violation 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).

[33] 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.

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

CONCLUSION

[35] The appeal is summarily dismissed.

Alyssa Yufe
Member, General Division

Date: April 23, 2014