

Citation: *N. M. v. Canada Employment Insurance Commission*, 2015 SSTAD 281

Appeal No: AD-13-57

BETWEEN:

N. M.

Applicant/Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal and Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Shu-Tai Cheng

DATE OF DECISION: March 3, 2015

DECISION

[1] The application for leave to appeal is granted and the appeal is allowed.

INTRODUCTION

[2] On April 3, 2013, the Board of Referees (Board) held a hearing in this matter and determined that the Applicant was entitled to 24 weeks of employment insurance benefits pursuant to section 12(2) of the *Employment Insurance Act* (Act). The Board, in dismissing the Applicant's appeal, noted that full benefits were interrupted when the Applicant was in receipt of Worker's Compensation payments and was unable to work and that she then returned to work part time, while also claiming part time Worker's Compensation benefits.

[3] The Applicant received the Board's decision on April 5, 2013 and asked to appeal this decision by Application for Leave to Appeal (Application) on May 13, 2013. She stated, in the Application, that the letter sent with the decision stated that she had 60 days to appeal to the Umpire and this was the reason for her Application was not being filed within 30 days.

[4] The Application raises the *Canadian Charter of Rights and Freedoms* and, specifically, discrimination based on disability in the manner that section 8(2) of the Act was interpreted to apply to her circumstances.

[5] The Tribunal requested written submissions from the parties relating to the leave to appeal. The Respondent requested an extension of time to file submissions and then filed an agreement between the parties that the matter be referred back to the Social Security Tribunal – General Division. The Respondent also requested that the Appeal Division render a decision pursuant to section 18 of the *Social Security Tribunal Regulations*.

ISSUE

[6] The Tribunal must decide if the appeal has a reasonable chance of success and whether to allow the appeal and refer the matter to the General Division.

LAW AND ANALYSIS

[7] The Application was filed outside of the current 30-day time limit. However, the Board communicated to the Applicant that she had 60 days to appeal, which created a reasonable expectation that the previous 60-day limit would apply to her case. The Application was filed within 38 days of its receipt by the Applicant. The Tribunal treated this request for leave to appeal to the Appeal Division as on time and complete. In light of the circumstances, it is my view that it would be contrary to the interests of justice to disallow the application for lateness, and I, therefore, allow further time within which this application can be made.

[8] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (the DESD Act), “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal”.

[9] Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

[10] Subsection 58(1) of the DESD Act states that the only grounds of appeal are the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (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.

[11] For our purposes, the decision of the Board is considered to be a decision of the General Division.

[12] The Applicant, without citing the section, referred in her Application to one of the grounds of appeal in subsection 58(1) of the DESD Act. The reasons stated in the Application are consistent with subsection 58(1)(b), a possible error in law in the making of the Board's decision, specifically discrimination based on the *Canadian Charter of Rights and Freedoms*, section 15, as it relates to the interpretation and application of section 8(2) of the Act.

[13] The Agreement of the parties states:

Whereas the Board of Referees dismissed the Appellant's appeal on April 3, 2013, and whereas the Appellant wishes to challenge for the first time the February 7, 2013 decision of the Commission by referring to the *Canadian Charter of Rights and Freedoms*,

The parties hereby consent to the Appeal Division of the Social Security Tribunal ordering pursuant to s. 59(1) of the *Department of Employment and Social Development Act* that:

The matter is referred back to the Social Security Tribunal - General Division for redetermination *de novo* of the Appellant's July 28, 2012 application for employment insurance benefits pursuant to the *Employment Insurance Act*.

Proceeding in this manner is the most cost effective and efficient manner for the Appellant and Respondent and is consistent with section 2 and paragraph 3(1)(a) of the *Social Security Tribunal Regulations* which require, respectively, that the tribunal interpret the *Regulations* so as to secure the just, most expeditious and least expensive determination of appeals, and to conduct hearings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

[14] Section 59(1) of the DESD Act states:

The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

[15] Section 18 of the *Social Security Tribunal Regulations* provides:

The parties to an appeal or an application may request the Tribunal to make a decision based on an agreement between the parties by filing the request and the agreement, signed by all the parties, with the Tribunal.

[16] Considering the arguments raised by the Applicant and the Agreement of the parties, I grant the application for leave to appeal. Further, because the Application suggests that the Applicant will present evidence (e.g. in relation to her disability and participation in a rehabilitation program, gradual return to the workplace, and ability to work), a hearing before the General Division is the appropriate forum for the hearing. The appeal is, therefore, allowed and the matter referred back to the General Division for reconsideration in accordance with these reasons.

CONCLUSION

[17] On agreement of the parties, the application for leave to appeal is granted and the appeal is allowed. The case will be returned to the General Division of the Tribunal for reconsideration.

Shu-Tai Cheng

Member, Appeal Division