

[TRANSLATION]

Citation: *A. W. v. Canada Employment Insurance Commission*, 2015 SSTAD 380

Appeal No.: AD-14-250

BETWEEN:

A. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Application for Extension of Time Limit and
Leave to Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Shu-Tai Cheng

DATE OF DECISION: March 20, 2015

DECISION

[1] The Social Security Tribunal of Canada grants the extension of the time limit for filing the application for leave to appeal to the Appeal Division. However, the application for leave to appeal to the Appeal Division is refused.

INTRODUCTION

[2] On March 13, 2014, the General Division of the Social Security Tribunal of Canada (the "Tribunal") determined that:

the Appellant failed to show that she did what any reasonable person would have done in the same situation to fulfill her obligations and assert her rights. Therefore, even though she seemed to meet the benefit entitlement conditions on December 23, 2012, she had no good cause under section 10(4) of the [*Employment Insurance*] Act to delay making her benefit claim.

[3] On June 4, 2014, the Applicant submitted a request on the "Request for Reconsideration of an Employment Insurance (EI) Decision" form. The Tribunal treated that request as an application for leave to appeal to the Appeal Division (the "Leave Application"). The Applicant explained that she filed her Leave Application more than 30 days after receiving the decision because her illness prevented her from acting earlier.

ISSUES

[4] Should an extension of the time limit for filing the Leave Application be granted?

[5] If an extension is granted, does the appeal have a reasonable chance of success?

THE LAW AND ANALYSIS

[6] Paragraph 57(2)(a) of the *Department of Employment and Social Development Act* states that an application for leave to appeal must be made within 30 days after the day on

which the decision is communicated to the appellant.

[7] The Tribunal must consider and weigh the criteria established by the case law. In *Canada (Minister of Human Resource Development) v. Gattellaro*, 2005 FC 883, the Federal Court established the following criteria:

- a) the appellant has shown a continuing intention to pursue the appeal;
- b) the matter discloses an arguable case;
- c) there is a reasonable explanation for the delay; and
- d) there is no prejudice to the other party in allowing the extension.

[8] The weight to be accorded to each factor laid down in *Gattellaro* will vary according to the circumstances, and in some cases, other factors will also be relevant. The overall question is whether it is in the interests of justice that the extension of time be granted: *Canada (Attorney General) Larkman*, 2012 FCA 204.

[9] The Federal Court of Appeal has held that the question whether a party to a dispute has an arguable case is akin to determining whether the party, legally, has a reasonable chance of success: *Canada (Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[10] The Applicant received the General Division's decision on March 24, 2014. She states that she contacted the Tribunal on April 16, 2014, seeking to appeal that decision, and that, during the conversation, she was told that she would have to fill out a request form. She went to the Service Canada office on April 17, 2014 to obtain the necessary form, and began working on her request. She indicates that she was unable to fill out the request form before June 4, 2014, because she was already sick and her health problems prevented her from acting more quickly. It took her 72 days to submit the request.

[11] The Commission has not filed any submissions regarding the extension of time or the Leave Application.

[12] The Applicant is facing a difficult financial situation. Since June 2014, she has been sending letters and calling the Tribunal to request that her Leave Application be handled on a priority basis.

[13] The Applicant has shown a continuing intention to pursue the appeal, she explained her delay, and an extension would not prejudice the Respondent. As for a reasonable chance of success, that will be discussed below. The Tribunal is satisfied that the other three factors from *Gattellaro* are met, and finds that it is in the interests of justice to grant the extension of the time limit for filing the Leave Application.

[14] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* provide that "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and that the Appeal Division "must either grant or refuse leave to appeal".

[15] Subsection 58(2) of the *Department of Employment and Social Development Act* provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

[16] According to subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- (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.

[17] An application for leave to appeal is a preliminary step to a hearing on the merits. The applicant at the leave stage does not have to prove his or her arguments.

[18] The Tribunal must grant the application if the applicant shows that one of the above-mentioned grounds of appeal has a reasonable chance of success.

[19] To this end, the Tribunal must be able to determine, under subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction, the answer to which may lead to the setting aside of the decision attacked.

[20] In her application, the Applicant notes that she disagrees with the General Division's decision. In detailed submissions, she contests eight of the decision's nine pages. However, she is repeating the evidence and arguments raised in the General Division.

[21] It is not the function of a member who is determining whether a leave application should be granted, to reassess and reweigh the evidence that was put before the General Division. Based on my reading of the file and the General Division's decision, the grounds raised by the Applicant in her application were already raised before the General Division.

[22] Since the Applicant has not raised any of the grounds of appeal in subsection 58(1) of the *Department of Employment and Social Development Act*, the appeal has no reasonable chance of success.

CONCLUSION

[23] The extension of the time limit for filing the application for leave to appeal is granted.

[24] The application is refused.

Shu-Tai Cheng

Member, Appeal Division