

Citation: *O. M. v. Canada Employment Insurance Commission*, 2015 SSTAD 506

Date: April 21, 2015

File number: AD-13-273

APPEAL DIVISION

Between:

O. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Shu-Tai Cheng, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] The Applicant applies to the Social Security Tribunal (Tribunal) for leave to appeal the decision of the Board of Referees (Board) issued on April 3, 2013. The Board denied his appeal on an allocation of earnings pursuant to sections 35 and 36 of the *Employment Insurance Regulations*. The Board noted that the Commission had corrected a mistake in calculation and unanimously dismissed his appeal.

[2] The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on May 29, 2013. The Application was filed outside of the current 30 day limit but within the old 60 day limit of the Applicant's receipt of the Board decision.

ISSUE

[3] In order to succeed on this application for leave, the Applicant must show that the appeal has a reasonable chance of success.

SUBMISSIONS

[4] The Applicant submitted in support of the Application that:

- (a) He took a parental leave for a five week period, and he applied for EI parental benefits after he returned to work due to a misunderstanding on whether he or the employer had to make the application;
- (b) He eventually received five weeks of parental benefits;
- (c) Afterwards, he was informed by the Commission that he should only have been paid benefits for three weeks because the first two weeks were a waiting period;
- (d) This was the Commission's mistake, and it is unfair that he has to reimburse the first two weeks;
- (e) The "overpayment" of two weeks should be deleted.

LAW AND ANALYSIS

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development (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”.

[6] 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”.

[7] 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.

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

[9] The Applicant needs to satisfy me that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[10] The Applicant’s submissions, as set out in paragraph [4] above, were made at the Board hearing.

[11] The Board considered the Applicant’s evidence and submissions at pages 2 to 4 of its decision. The Board noted the claimant’s “very credible” testimony and the calculation mistake

of the Commission which had been corrected. The Board, nevertheless, had no choice based on the law and jurisprudence but to dismiss the appeal.

[12] I have read and carefully considered the Board's decision and the record. There is no suggestion by the Applicant that the Board failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law nor identified any erroneous findings of fact which the Board may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision. The Applicant has not cited any of the enumerated grounds of appeal.

[13] While an Applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. The Application is deficient in this regard, and the Applicant has not satisfied me that the appeal has a reasonable chance of success.

CONCLUSION

[14] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division