[TRANSLATION]

Citation: *N. D. v. Canada Employment Insurance Commission*, 2015 SSTAD 580

Date: May 11, 2015

File number: AD-14-303

APPEAL DIVISION

Between:

N.D.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

Hearing held by teleconference on May 7, 2015

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On May 30, 2014, the Tribunal's General Division found that:

> - The Appellant's appeal should be summarily dismissed and it should be found that employment insurance benefits could be paid to the Appellant for 20 weeks pursuant to subsection 12(2) of the *Employment Insurance Act* ("the *Act*").

[3] The Appellant filed an appeal to the Appeal Division on June 18, 2014. She acknowledged receipt of the General Division's decision on June 2, 2014.

FORM OF HEARING

[4] The Tribunal determined that this appeal would proceed by teleconference for the following reasons:

- the complexity of the issue or issues;
- the fact that the parties' credibility was not one of the main issues;
- the cost-effectiveness and expediency of the hearing choice;
- the need to proceed as informally and quickly as possible while complying with the rules of natural justice.

[5] The Appellant was present at the hearing. The Respondent was absent.

THE LAW

[6] Under 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 or order, whether or not the error appears on the face of the record; or

(c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

ISSUE

[7] The Tribunal must determine whether the General Division erred in fact and in law in summarily dismissing the Appellant's appeal and in finding that employment insurance benefits could be paid to the Appellant for 20 weeks pursuant to subsection 12(2) of the *Act*.

ARGUMENTS

[8] The Appellant's arguments in support of her appeal are as follows:

- She understands the *Act*, but she would like it changed to take account of the reality of seniors;

- She is sorry the Respondent was not at the hearing. It does not seem to consider her case serious and important;

- The Appellant notes that she worked for 50 years and that, upon retiring at the age of 74, she expected that the years she worked would be recognized and that she would be paid a full year of employment insurance;

- She adds that she did not always work two days a week. She worked five days a week starting when she was 18 years old and did so until the age of 60, stopping only twice to have her family;

- She states that she paid a lot of unemployment insurance in her life;

- At the age of 75, she is asking for her 52 weeks of unemployment insurance. She states that she is prepared to return to work and that, by winning her case, she

would be helping baby boomers prolong work, with the retirement age supposed to be changing from 65 to 67.

[9] The Respondent's arguments against the Appellant's appeal are as follows:

- The Respondent is of the view that the General Division did not err in summarily dismissing the claimant's appeal and submits that the General Division properly exercised its jurisdiction;

- The Respondent submits that the Appellant has not shown that she has a ground of appeal and respectfully requests that the Appeal Division dismiss the appeal.

STANDARDS OF REVIEW

[10] The parties made no submissions concerning the applicable standard of review.

[11] The Tribunal notes that the Federal Court of Appeal has held that the standard of judicial review applicable to a decision of a Board of Referees or an Umpire on questions of law is correctness (*Martens v. Canada (AG)*, 2008 FCA 240) and that the standard of review applicable to questions of mixed fact and law is reasonableness (*Canada (AG) v. Hallée*, 2008 FCA 159).

ANALYSIS

[12] The Appellant's arguments before the Appeal Division are essentially the same as her arguments before the General Division.

[13] She would like the *Act* amended to take account of the reality of seniors, who are obliged to return to the labour market because their retirement income is insufficient given the increase in the cost of living. She laments the fact that the Respondent has no interest in the situation of seniors.

[14] In its decision to summarily dismiss the appeal, the General Division reached the following conclusions:

> [Translation]
>
> [18] The claimant's record of employment for Air Inuit with June 19, 2013, as the last day worked shows 726 insurable hours. The documents submitted by the Commission establish that the claimant was living in the economic region of Montreal when she filed her employment insurance application (GD3-14) and that the unemployment rate there was 8.3% at that time (GD3-16).
>
> [19] Having regard to this information, and in accordance with Schedule 1 of the *Act*, the Tribunal finds that the claimant can receive employment insurance benefits for 20 weeks.
>
> [20] The claimant stated that she did not work for any other employer in her qualifying period, and she did not submit any new materials that could entitle her to additional weeks of benefits. The Tribunal is of the opinion that, having regard to the facts on file, this appeal has no reasonable chance of success.

[15] Although the Tribunal is sympathetic to the Appellant, the *Act* does not allow any discrepancy and provides the Tribunal with no discretion to change the *Act* (*Lévesque*, A-196-01). The Appellant received the number of weeks of benefits to which she was entitled. To decide otherwise would be contrary to the law.

[16] The General Division was therefore justified in summarily dismissing the Appellant's appeal, since the basis of the appeal was such that the appeal had no reasonable chance of success and was clearly bound to fail (*Lessard-Gauvin v. Canada (AG)*, 2013 FCA 147).

CONCLUSION

[17] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division