

Citation: *Canada Employment Insurance Commission v. D. G.*, 2015 SSTAD 916

Date: July 24, 2015

File number: AD-13-1164

APPEAL DIVISION

Between:

Canada Employment Insurance Commission

Applicant

and

D. G.

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 May 23, 2013. The Board allowed the claimant's appeal where the Commission had determined that the claimant did not accumulate enough hours of insured employment to establish a claim pursuant to section 7 of the *Employment Insurance Act* (EI Act).

[2] The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on June 11, 2013. The Application was filed within the 30 day time limit.

[3] The grounds of appeal and reasons for appeal stated in the Application were that:

- a) the Board erred in law in making its decision, when it failed to apply the relevant facts to the legislation and when it failed to return the matter back to the Commission for a report and investigation on whether the claimant qualified for an extension of his benefit period in accordance with section 82 of the EI Regulations; and
- b) the Board erred in law, when it concluded that the claimant was entitled to benefits, as the evidence clearly shows that he does not qualify to have his benefit period extended pursuant to section 10(10) of the EI Act and did not accumulate the required insurable hours in his extended qualifying period to be paid regular EI benefits in accordance with section 7(2)(b) of the EI Act.

[4] The Tribunal requested written submissions from the parties, by July 17, 2015, on:

- a) whether the matter should be referred to the Commission on the issue of extension of the benefit period; and
- b) whether leave should be granted or refused.

[5] The Applicant filed submissions which stated that the claimant does not satisfy the requirements to have his benefit period extended on his his claim established on March 29, 2011. He does meet the criteria to extend his qualifying period pursuant to section 8 of the EI Act; however, he does not qualify for benefits, under section 8, as of February 10, 2013, because he accumulated 0 of the required 630 insurable hours in his qualifying period (March 29, 2011 to February 9, 2012) to be paid regular EI benefits in accordance with subsection 7(2)(b) of the EI Act.

[6] The Respondent filed submissions stating that he was “unable to work as per subsection 8 of the Employment Insurance Act that I was incapable to work because of a prescribed injury” and, therefore, should be considered eligible to receive EI benefits due to circumstances beyond his control.

ISSUE

[7] The Tribunal must decide whether the appeal has a reasonable chance of success.

LAW AND ANALYSIS

[8] 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”.

[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 needs to satisfy me that the reasons for appeal fall within any of the grounds of appeal. At least one of the reasons must have a reasonable chance of success, before leave can be granted.

[13] The Board's decision does not refer to the requirements under section 10 of the EI Act allowing for an extension of the benefit period.

[14] The Board found, at pages 2 and 3, that: "[the current inquiry] should not be considered as a new inquiry but rather as an extension of the current file. Article 10 of the Law should have been applied in the claimant's case. He was sick and this was confirmed. Therefore, the claimant could still be entitled to benefits at least until February 4, 2013."

[15] The Board decision does not refer to jurisprudence or state the factors to be considered under section 10 of the EI Act in arriving at its conclusion that it should have been applied in this case. The Board considered that the claimant was sick and that this was confirmed.

[16] Subsection 10(10) of the EI Act states:

(10) A claimant's benefit period is extended by the aggregate of any weeks during the benefit period for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because the claimant was

(a) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the claimant was being held or any other offence arising out of the same transaction;

(b) in receipt of earnings paid because of the complete severance of their relationship with their former employer;

(c) in receipt of workers' compensation payments for an illness or injury; or

(d) in receipt of payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the claimant, her unborn child or a child whom she was breast-feeding.

[17] The Board also did not consider section 8(2) of the EI Act pursuant to which the qualifying period may be extended because the claimant was incapable of work due to a prescribed illness or other enumerated reason.

[18] The Applicant's grounds of appeal are that the Board erred in law in making its decision when it failed to apply the relevant evidence to the legislation.

[19] 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. Here, the Applicant referred to the legislation relevant to an extension of the benefit period and provided an explanation on how the Board is said to have failed to apply the evidence to the legislation.

[20] The Application has set out reasons which fall into the enumerated grounds of appeal, and I am satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[21] The Application is granted.

[22] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[23] I invite the parties to make written submissions on whether a hearing is appropriate and, if it is, the form of the hearing and, also, on the merits of the appeal.

Shu-Tai Cheng
Member, Appeal Division