

Citation: *O. R. v. Canada Employment Insurance Commission*, 2015 SSTAD 926

Date: July 27, 2015

File number: AD-14-607

APPEAL DIVISION

Between:

O. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

Mobile Maestria

Added Party

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

REASONS AND DECISION

INTRODUCTION

[1] On October 2, 2014, the General Division of the Social Security Tribunal of Canada (Tribunal) held a hearing in this matter and determined that the claimant voluntarily left his employment without just cause within the meaning of the *Employment Insurance Act* (EI Act) and dismissed his appeal regarding a disqualification imposed pursuant to sections 29 and 30 of the EI Act. The decision of the General Division was issued on October 22, 2014.

[2] The Applicant stated that he found out about the decision of the General Division when he contacted the Tribunal for an update on his file (on October 22, 2014). Prior to this, he did not know that a hearing had taken place and had not yet received a copy of the decision. When he did, he contacted the Tribunal to ask about filing an appeal and was directed to the “Notice of Appeal – General Division EI Section” Form. He filled out this document and filed it with the Tribunal on December 10, 2014, 49 days after the decision was issued. The Application does not state on what date the Applicant received the decision by mail.

[3] The Notice was treated as a late Application for Leave to Appeal (Application) to the Appeal Division of the Tribunal. The Applicant gave as the reason for his appeal that the hearing had taken place without his knowledge and he was not given an opportunity to state his case. The reasons given for his delay in filing the Application were that the decision took some time to arrive by mail, and he was confused about the appeal process, contacted the Tribunal, which required waiting for a callback, and was given conflicting information.

ISSUE

[4] The Tribunal must first decide if an extension of time to apply for leave to appeal should be granted.

[5] If an extension of time is granted, the Tribunal must decide if the appeal has a reasonable chance of success.

LAW AND ANALYSIS

[6] Pursuant to subsections 57(1) and (2) of the *Department of Employment and Social Development Act* (DESD Act), an application for leave to appeal must be made to the Appeal Division, in the case of a decision made by the Employment Insurance Section, 30 days after the day on which it is communicated to the appellant, and the Appeal Division may allow further time within which an application for leave is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant.

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

[8] 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”.

[9] 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.

Extension of Time

[10] As to the late filing of the Application, the Applicant has explained the delay: he was not aware that a hearing had been held and a decision rendered in his absence. When he became aware of the contents of the decision, he called the Tribunal and it took a long time to

get a callback. He was then was given conflicting information (on which form to use to file an appeal), after which he prepared and filed the Application.

[11] There is no prejudice to the Respondent or to the Added Party in allowing the extension. The General Division's decision was based on the information in the docket, and the docket is readily available to the parties.

[12] I will address the issue of whether there is a reasonable chance of success in the context of the leave application, immediately below.

[13] I am satisfied with the Applicant's explanation for the delay in filing the Application, his continued intention to pursue the appeal and that there is no prejudice to the Respondent or the Added Party. These are factors that are relevant to a request for an extension of time. In the interests of justice, I grant an extension of time for the filing of the Application.

Application for Leave to Appeal

[14] The Tribunal must be satisfied 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.

[15] The Applicant, without citing the section, referred in the Application to one of the grounds of appeal in subsection 58(1) of the DESD Act, namely, subsection 58(1)(a), a possible breach of natural justice, specifically the right to be heard.

[16] The General Division decision states that the Applicant was notified and invited to be present at the hearing. However, the Applicant asserts that he did not receive the Notice of Hearing. The docket includes a copy of the Notice of Hearing and Canada Post tracking information confirming that "O. R." signed for the envelope containing the Notice. The Applicant states that he does not sign "O." or "O. R." because he goes by "A." and signs "A.". The Application is signed "A. R.". The Notice of Appeal to the General Division is also signed "A. R.".

[17] The Respondent was not present at the hearing, although it did file written representations for the General Division's consideration. The decision was made based on

information from the docket including the Respondent's representations. The Applicant's information and the employer's information, contained in the docket, were conflicting on important issues.

[18] Given the fundamental nature of the right to be heard, the conflicting information in the docket, and the conflicting information on whether the Applicant received notice of the hearing before the General Division, the situation warrants further review. For these reasons, I am satisfied that the appeal has a reasonable chance of success.

[19] Considering the grounds for appeal raised by the Applicant and my review of the decision of the General Division and the file, I grant the application for leave to appeal.

CONCLUSION

[20] The application for leave to appeal is granted.

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

[22] I invite the parties to make 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