

Citation: *C. W. v. Canada Employment Insurance Commission*, 2015 SSTAD 969

Date: August 7, 2015

File number: AD-14-614

APPEAL DIVISION

Between:

C. W.

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 General Division (GD) of the Tribunal issued on October 10, 2014. The GD denied his appeal on the allocation of pension earnings.

[2] The Applicant received the GD decision on October 31, 2014 and filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on December 16, 2014. The Application was filed outside of the 30 day limit.

ISSUE

[3] In order for the Application to be considered, an extension of time to apply for leave to appeal must be granted.

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

SUBMISSIONS

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

- a) The GD erred in law in making its decision as section 57 of the *Employment Insurance Act* (Act) is faulty;
- b) Section 57 of the Act is faulty because the definition of “earnings” in the Act was amended and the Constitution does not give Parliament the power to change the definition of a word; and
- c) The judgment of the Federal Court of Appeal dated July 4, 1986, in *Cote v. Canada* (A.G.) A-178-86 supports his position.

LAW AND ANALYSIS

[6] 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”.

[7] 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”.

[8] 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

[9] The Applicant was advised by the Tribunal that the Application was late. In a letter of December 19, 2014, the Applicant was given until January 18, 2015 to submit an explanation for the delay in filing the Application. He provided further information on January 8, 2015 and stated that the reasons for the delay were mailing time and internal Tribunal processing time.

[10] The Applicant stated that he received the decision 10 days before calling the Tribunal’s toll-free number on November 10, 2014, which would have been October 31, 2014. Therefore, the Applicant was 16 days late in filing the Application. He also noted that the Tribunal employee with whom he spoke did not tell him that the 30 day time limit including mailing time and internal Tribunal processing time. He stated that he had every intention of pursuing the Application.

[11] Given the 16 day delay, the Applicant's explanation, and in the interests of justice, I grant an extension of time for the filing of the Application.

Application for Leave to Appeal

[12] 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.

[13] The Applicant's submissions, as set out in paragraph [5] above, were made at the GD hearing.

[14] The General Division considered the Applicant's evidence and submissions at pages 3, 4, 5 and 6 of its decision. The GD noted that:

[15] In this case the Tribunal relies on the established jurisprudence in the Federal Court of Appeal's decision in *Cote A-178-86*, that pension income constitutes earnings within the meaning of the Act and Regulations and such earnings must therefore be allocated for employment insurance purposes.

(...)

[17] The Claimant presents the argument the *Employment Insurance Act* cannot change the meaning of the word just to reduce employment insurance benefits. The Tribunal finds there is no provision in the Act or the Regulations to allow the pension money the Claimant received cannot [sic] be allocated as earnings. The Tribunal sympathies [sic] with the Claimant that he does not agree however the Tribunal is bound by the legislation and cannot change it to accommodate the Claimant's request.

[15] The *Cote* decision relied upon by the Applicant was referred to in the GD decision for the principle that pension income constitutes earnings within the meaning of the Act and its Regulations. This decision does not stand for the proposition that the Applicant asserts, namely, that the definition of earnings to include pension income is faulty and outside of Parliament's power.

[16] I have read and carefully considered the GD's decision and the record. There is no suggestion that the General Division 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 GD may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[17] 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 I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[18] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division