

Citation: *D. B. v. Canada Employment Insurance Commission*, 2015 SSTAD 1064

Date: September 10, 2015

File number: AD-14-627

APPEAL DIVISION

Between:

D. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

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

REASONS AND DECISION

INTRODUCTION

[1] On September 29, 2014, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) refused an extension of time within which to bring the appeal. The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal.

[2] The GD refused to grant an extension of time within which to bring an appeal where the Applicant was almost two months late filing the appeal.

[3] The GD found that the Applicant did not show a continuing intent to pursue his appeal and did not offer any explanation for the delay. The GD was not satisfied that the Applicant had an arguable case on the appeal and concluded that an extension of time should not be granted.

ISSUE

[4] The Appeal Division of the Tribunal must decide if the appeal has a reasonable chance of success.

LAW AND ANALYSIS

[5] 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.”

[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] 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.

[9] The Applicant makes a number of submissions as to why his appeal should be allowed. His main arguments appear to be that he did not refuse work and he does not know how to appeal a Tribunal decision.

[10] The Applicant did not make reference to subsection 58(1) of the DESD Act. It is not clear to me how the GD is alleged to have erred.

[11] The GD was considering an extension of time within which to file an appeal, a matter made necessary by the late filing of the appeal by the Applicant. The Applicant was asked to provide an explanation for the delay and failed to respond. The decision being appealed from was a refusal by the Commission to grant an extension of time within which to file an appeal from an earlier decision of the Commission (relating to a disqualification).

[12] The role of the Appeal Division is to determine if a reviewable error set out in subsection 58(1) of the DESD Act has been made by the General Division and, if so, to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the Appeal Division to intervene.

[13] I have read and carefully considered the GD's decision and the record. There is no suggestion that the GD 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.

[14] In order to have a reasonable chance of success, the Applicant must explain how at least one reviewable error has been made by the GD. The Application is deficient in this regard, and I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[15] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division