

Citation: *M. A. v. Canada Employment Insurance Commission*, 2015 SSTAD 1065

Date: September 10, 2015

File number: AD-14-624

APPEAL DIVISION

Between:

M. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

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

REASONS AND DECISION

INTRODUCTION

[1] On November 5, 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 on December 19, 2014. The Applicant stated that he received the decision of the GD on December 4, 2014. If that was the case, then the Application was filed within the prescribed time limit.

[2] Before the GD, the Applicant had submitted an incomplete appeal outside of the 30 day limit. He did not complete his appeal until almost five months later. The GD found that the Applicant did not show a continuing intent to pursue his appeal and did not offer a reasonable explanation for the delay. The GD was not satisfied that the Applicant had an arguable case on the appeal and concluded that it was not in the interest of justice to grant the extension of time.

ISSUE

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

LAW AND ANALYSIS

[4] 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.”

[5] 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.”

[6] 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.

[7] 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.

[8] The Applicant makes a number of submissions as to why his appeal should be allowed. His main argument appears to be that he was the victim of identity theft (in 1998) and the GD failed to observe a principle of natural justice by not taking a closer look at this issue.

[9] Although the Applicant makes reference to subsection 58(1) of the DESD Act, it is not clear to me how the GD is alleged to have erred.

[10] 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 decision being appealed from was a refusal by the Commission to grant an extension of time within which to file an appeal from a decision of the Commission (relating to benefit period, penalty and violation).

[11] 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.

[12] 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, other than the Applicant's assertion, 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.

[13] 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

[14] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division