

Citation: *B. C. v. Canada Employment Insurance Commission*, 2015 SSTAD 1069

Date: September 11, 2015

File number: AD-14-626

APPEAL DIVISION

Between:

B. C.

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, dated December 5, 2014. The General Division denied her appeal of the Respondent's refusal to antedate her claim for employment insurance (EI) benefits.

[2] The Applicant received the GD decision on December 10, 2014 and filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on December 18, 2014. The Application was filed within the 30 day time limit.

ISSUE

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

SUBMISSIONS

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

- a) The GD erred in a number of findings of fact and the decision was based on errors in law;
- b) The GD failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- c) Service Canada failed in its responsibilities for many reasons;
- d) She reviewed information on the Service Canada website and it categorically stated that a person may not be eligible for benefits if the person was dismissed for misconduct;
- e) She believed, and the "reasonable person" understands, that dismissal for cause is equal to dismissal for misconduct;
- f) Service Canada staff advised that dismissal for cause will result in denial of EI benefits;

- g) She only determined that dismissal for cause may not result in denial of EI benefits through information received from a lawyer;
- h) A reasonable person would not normally seek the advice of counsel; and
- i) She conducted herself as a reasonable person would.

LAW AND ANALYSIS

[5] 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”.

[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’s submissions as set out in paragraph [4] c) to i) above were made before the General Division. The GD considered the Applicant’s evidence and submissions at pages 3 to 9 of its decision.

[10] It is not sufficient to repeat the evidence and submissions that were before the General Division in an application for leave to appeal to the Appeal Division.

[11] As for the Applicant's submission as set out in paragraph [4] a), above, errors in findings of fact and errors in law in the GD decision, the Applicant's reasons for appeal are a repetition of the evidence and submissions before the GD at the hearing and in the GD record.

[12] Subsection 58(1)(c) of the DESD Act specifies a decision based on an erroneous finding of fact that the GD made in a perverse or capricious manner or without regard for the material before it. Not every erroneous finding of fact will fall within these terms. For example, an erroneous finding of fact upon which the GD does not base its decision would not be caught, nor would one that is not made in a perverse or capricious manner or without regard for the material before the Tribunal.

[13] The Application does not specify how the alleged errors in findings of fact were made in a perverse or capricious manner or without regard for the material before it, or how the decision was based on the alleged error, apart from repeating the evidence and submissions before the GD.

[14] Subsection 58(1)(b) of the DESD Act specifies errors in law in making the decision. The Applicant argues that the GD's conclusions in relation to "good cause for delay" and "reasonable and prudent person" were in error. The GD did apply these principles of law in its decision and cited jurisprudence. However, it is not clear from the Application how the application of these principles amounted to an error of law, other than the Applicant's disagreement with the GD's conclusions.

[15] As for the submission in paragraph [4] b) above, 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.

[16] The role of the Appeal Division is to determine if a reviewable error set out in subsections 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. It is not our role to re-hear the case *de novo*.

[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