

Citation: *R. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 1096

Date: September 15, 2015

File number: AD-15-48

APPEAL DIVISION

Between:

R. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

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

REASONS AND DECISION

INTRODUCTION

[1] On November 6, 2014, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) determined that the claimant (Applicant) had not proven just cause to voluntarily leave his employment in accordance with sections 29 and 30 of the *Employment Insurance Act* (Act). The GD decision was sent to the Applicant on November 7, 2014.

[2] The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on February 4, 2015. While it is not clear on what date, in November 2014, the Applicant received the GD decision, the Application was filed eighty-nine (89) days after the decision was issued. 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 the extension of time 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 there were errors in the GD decision, including those related to:

- a) failure to attempt to resolve workplace issues;
- b) excessive overtime and intolerable work hours;
- c) changes in his duties and his refusal due to health hazards; and
- d) the hours stated in his record of employment.

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 February 10, 2015, the Applicant was given until March 12, 2015 to submit an explanation for the delay in filing the Application. He provided further information on February 20, 2015 and stated that the reasons for the delay were that he was not informed that an appeal needed to be filed within one month and it took time to obtain additional information. He submitted that he had a continued intention to pursue the application, that the matter discloses an arguable case and that there is no prejudice to other parties in extending the deadline.

[10] The Tribunal's letter enclosing the GD decision, dated November 7, 2014, stated that the decision was attached. It did not state that if appealing the decision, an application requesting leave to appeal was required within 30 days.

[11] The Application was late by about fifty (50) days. The Applicant points to the additional information he submitted with the Application to show that he had a continued intention to pursue the appeal. He provided two and a half pages of reasons for his appeal which he maintains disclose an arguable case. There is no prejudice to the other parties in extending the deadline.

[12] Given the length of the 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

[13] 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.

[14] While the Applicant's submissions, as set out in paragraph [5] above, do not specifically refer to subsection 58(1)(c) of the DESD Act, they suggest that the GD based its decision on erroneous findings of fact that it made in a perverse or capricious manner or without regard for the material before it.

[15] 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. Here, the Applicant asserts errors of fact and provides an explanation on how the GD is said to have based its decision on these erroneous findings of fact that were made in a perverse or capricious manner or without regard for the material before it.

[16] Considering the arguments raised by the Applicant and my review of the GD decision and docket, I am satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[17] The Application is granted.

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

[19] I invite the parties to make written 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