Citation: ***A. V. v. Canada Employment Insurance Commission*****, 2015 SSTAD 1107**

Date: September 18, 2015

File number: AD-15-60

APPEAL DIVISION

Between:

A. V.

Applicant

and

Canada Employment Insurance Commission

Respondent

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

REASONS AND DECISION

INTRODUCTION

[1] On June 5, 2014, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) determined that the claimant (Applicant) was disentitled to benefits for the entire period that he was outside Canada, pursuant to section 55 of the *Employment Insurance Act* (EI Act). In addition, the GD found that that the Applicant knowingly made a false statement or representation to the Canada Employment Insurance Commission (Commission) and therefore, a penalty must be imposed pursuant to section 38 of the EI Act.

[2] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on February 12, 2015. The Applicant stated that he received the GD decision on June 9, 2014. The Application was filed 218 days 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 gave as his reasons for late appeal that he had been disabled and in the hospital. He had an acute condition which required surgery. His illness, surgery and recovery delayed his filing of the Application.

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

a) When he discovered the error in his claim, he immediately stopped claiming employment insurance;

b) He is being bullied and manipulated with a fine and penalty; and

c) He did not even collect benefits until the final allowed date.

LAW AND ANALYSIS

[7] Pursuant to subsections 57(1) and (2) of the *Department of Employment and Social Development Act* (DESD Act), an application for leave to appeal must be made to the Appeal Division, in the case of a decision made by the Employment Insurance Section, 30 days after the day on which it is communicated to the appellant, and the Appeal Division may allow further time within which an application for leave is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant.

[8] According to subsections 56(1) and 58(3) of the 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".

[9] 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".

[10] 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

[11] The Applicant provided, on filing the Application, reasons for the delay. He stated that his acute illness, surgery and recovery delayed the filing of the Application. He relies on these reasons to show that he had a continued intention to pursue the application. His submissions on whether the matter discloses an arguable case are taken to be the reasons given for appeal. There is no prejudice to other parties in extending the deadline.

[12] The Application was late by 218 days, but it was not more than one year after the day on which the decision is communicated to the Applicant.

[13] While the Applicant provides an explanation for the delay, asserts a continued intention to pursue the appeal, and there is no prejudice to the other parties in extending the deadline, the delay is significant and whether the matter discloses an arguable case is questionable.

[14] Nevertheless, in the interests of justice, I grant an extension of time for the filing of the Application.

Application for Leave to Appeal

[15] 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.

[16] The Applicant's submissions, as set out in paragraph [6] above, do not specifically refer to subsection 58(1)(c) of the DESD Act. However, since they relate to specific facts advanced by the Applicant, the submissions suggest that the Applicant is arguing that the GD based its decision on erroneous findings of fact.

[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. Here, the Applicant seems to assert errors of fact but does not provide 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.

[18] Not every erroneous finding of fact will fall within the terms of subsection 58(1)(c) of the DESD Act. 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.

[19] The GD considered the Applicant's evidence and submissions at pages 7 to 16 of its decision. The Applicant attended the GD hearing, gave evidence and made submissions.

[20] The role of the AD is to determine if a reviewable error set out in subsection 58(1) of the DESD Act has been made by the GD and, if so, to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the AD to intervene. It is not the role of the AD to re-hear the case *de novo*.

[21] 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.

[22] 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

[23] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division