

Citation: *Canada Employment Insurance Commission v. T. A.*, 2015 SSTAD 1335

Date: November 18, 2015

File number: AD-15-1203

APPEAL DIVISION

Between:

Canada Employment Insurance Commission

Applicant

and

T. A.

Respondent

Decision by: Pierre Lafontaine, Member, Appeal Division

REASONS AND DECISION

DECISION

[1] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On October 22, 2015, the General Division of the Tribunal determined that:

- The Respondent met the onus placed upon him to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to section 10(4) of the *Employment Insurance Act* (the “Act”).

[3] The Applicant requested leave to appeal to the Appeal Division on November 5, 2015.

ISSUE

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

THE LAW

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (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”.

[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”.

ANALYSIS

[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] In regards to the application for permission to appeal, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned 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 submits that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner and its decision is not reasonable. The Applicant argues that the evidence shows that the Respondent during a period of over sixteen months, while attempting to connect with the employer to get his hours reinstated, while capable of filing a Labour Standards claim and while filing for an Ontario Disability claim, and being aware of EI benefits, made no enquiries as to his rights and obligations under the *Act*.

[10] Furthermore, the Applicant pleads that the evidence shows a change in the Respondent's initial statement from those made after the unfavorable decision. These contradictions were not considered by the General Division. The Federal Court of Appeal holds that claimants have a duty to enquire about their rights and obligations and the steps that should be taken or show exceptional circumstances for not doing so and that it is an error for a Tribunal to ignore discrepancies without giving reasons for doing so.

[11] The Applicant submits that the reasonable conclusion given the evidence is that there were no exceptional circumstances in the Respondent's case that prevented him from making enquiries as to his entitlement.

[12] The Applicant submits that a reasonable person in his circumstances would not have waited months to make enquiries with the Applicant as to his course of action. Given the General Division determined the Respondent was aware of EI benefits and given that he was capable of making attempts to determine his status with his employer, capable of filing a Labour Standards claim and capable of filing for disability benefits, it would be a reasonable conclusion that he was capable of making enquiries with the Applicant.

[13] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of its request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out reasons which fall into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[14] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine
Member, Appeal Division