

Citation: *E. G. v. Canada Employment Insurance Commission*, 2015 SSTAD 1438

Date: December 15, 2015

File number: AD-15-886

APPEAL DIVISION

Between:

E. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

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

REASONS AND DECISION

INTRODUCTION

[1] On July 2, 2015 the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) refused an extension of time for the Applicant to file an appeal from a reconsideration decision of the Canada Employment Insurance Commission (Commission).

[2] The Commission (Respondent) had denied the Applicant's claim for employment insurance (EI) benefits because she had been determined to have voluntarily left her employment without just cause. Her claim was denied on reconsideration by written decision dated December 23, 2014.

[3] It is unclear when the Applicant received the reconsideration decision. She filed a Notice of Appeal (NoA) with the Tribunal on January 22, 2015 which the Tribunal considered as incomplete because the reconsideration decision was not attached to the NoA.

[4] The Tribunal asked the Applicant, by letter dated January 29, 2015, to provide the reconsideration decision. In response, the Applicant sent documents to the Tribunal which included the reconsideration decision, but it is unclear on what date they were received. There are two date stamps on the document sent to the Tribunal: "Feb. 27 2015" and "Mar. 06 2015".

[5] On March 17, 2015, the Tribunal requested that the Applicant file a request for an extension of time. The Applicant responded on June 26, 2015. She expressed frustration about the treatment of her appeal and stated that she did not know how to respond to the specific points asked; however, she did try to explain the reasons for her appeal. On July 2, 2015, the GD refused the extension of time, by written decision (GD decision). The GD decision was sent to the Applicant under cover of letter dated July 3, 2015. The Applicant stated that she received the GD Decision on July 22, 2015.

[6] The Applicant filed an application for leave to appeal (Application) to the Appeal Division (AD) of the Tribunal on August 10, 2015, within the 30 day limit.

ISSUE

[7] The AD must decide if the appeal has a reasonable chance of success.

LAW AND ANALYSIS

[8] 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 AD, in the case of a decision made by the GD Employment Insurance Section, 30 days after the day on which it is communicated to the appellant. The AD 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.

[9] 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”.

[10] 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”.

[11] 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.

[12] 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.

[13] The Applicant relies on the refusal of the GD to consider any of the circumstances surrounding her claim for EI benefits and its cursory refusal of an extension of time.

[14] While the Applicant does not cite the paragraph(s) of subsection 58(1) of the DESD Act upon which she relies, her reasons for appeal appear to fall within paragraphs (a) and (c).

[15] The NoA before the GD is dated January 22, 2015. It was date stamped January 22, 2015, by the Tribunal. The GD decision states that the NoA was filed on January 26, 2015. On reviewing the Tribunal file, I note that there is a second copy of the NoA which appears to have been received on January 26, 2015. The first NoA received is date stamped January 22, 2015.

[16] The Tribunal wrote to the Applicant on January 29, 2015 to advise that the appeal was not properly filed as it was missing a copy of the reconsideration decision.

[17] I have reviewed the NoA date stamped January 22, 2015 and the one date stamped January 26, 2015. Both versions have documents attached to the NoA, and one of the documents attached is the Commission's reconsideration decision dated December 23, 2014.

[18] The Applicant had 30 days following receipt of the reconsideration decision to file an appeal with the GD of the Tribunal. It is unclear on what date the Applicant received the reconsideration decision. However, given the statutory holidays during late December and early January, it is likely that the Applicant did not receive the reconsideration decision until the last days of December 2014 or early January 2015. She filed her NoA on January 22, 2015, within 30 days of the date of the reconsideration decision. The NoA was filed within 30 days of the Applicant having received it.

[19] Therefore, it appears that the Tribunal was mistaken in treating the appeal before the GD as incomplete and was mistaken in treating it as late before the GD.

[20] These apparent errors in the treatment of the NoA are what led to the GD refusing an extension of time. This situation forms a reasonable basis upon which to assert a breach of procedural fairness and natural justice.

[21] On the ground that there may be a breach of natural justice, I am satisfied that the appeal has a reasonable chance of success. I need not pronounce on the grounds that there may be errors of fact, given that a breach of procedural fairness would be determinative of the appeal.

[22] Therefore, I grant the application for leave to appeal.

CONCLUSION

[23] The application for leave to appeal is granted.

Shu-Tai Cheng
Member, Appeal Division