[TRANSLATION]

Citation: *P. D. v. Canada Employment Insurance Commission*, 2015 SSTAD 1474

Date: December 24, 2015

File number: AD-15-1157

APPEAL DIVISION

Between:

P. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

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

REASONS AND DECISION

INTRODUCTION

[1] On September 25, 2015, the General Division of the Social Security Tribunal (the Tribunal) determined that Employment Insurance benefits were not payable.

[2] That decision was communicated to the Applicant in a letter dated September 28, 2015, which the Applicant received on October 1, 2015. On October 26, 2015, the Applicant filed an application for leave to appeal (Application) with the Appeal Division within the prescribed time limits.

ISSUE

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

THE LAW AND ANALYSIS

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

[5] Subsection 58(2) of the *Department of Employment and Social Development Act* provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

[6] In accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

> (*a*) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
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> (*b*) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
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> (*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.

[7] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove the case.

[8] The Tribunal will grant leave to appeal if the Applicant shows that there is at least one of the aforementioned grounds of appeal and if it is satisfied that one of these grounds has a reasonable chance of success.

[9] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction whose response might justify setting aside the decision under review.

[10] In his Application and written observations, the Applicant submits the following:

(a) The General Division's decision is erroneous in fact and in law;

(b) The Commission's decision is unreasonable, abusive and discriminatory;

(c) The error of law identified is that the issue was incorrectly framed; and

(d) The errors of fact or of mixed fact and law are as follows:

1. It is wrong to suggest that the Applicant was penalized for receiving a severance package of eight months; his benefit period was merely moved; and

2. It is erroneous to conclude that the qualifying period should have started on October 27, 2013; the Applicant argues that the qualifying period should have started on October 14, 2012.

[11] Since a leave to appeal proceeding is a preliminary step to a hearing on the merits (in the event a hearing is necessary), the parties do not have to prove their case. The Tribunal will grant leave to appeal if it is satisfied that one of the grounds of appeal has a reasonable chance of success.

[12] The General Division's decision stipulates the following in the "Analysis" section:

> [Translation]
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> [28] In his request to appeal, the Appellant submits that it would have been more advantageous for him if his qualifying period had started on October 27, 2013, rather than December 1, 2013. The Tribunal will render its decision on the issue, namely, whether the Appellant accumulated a sufficient number of hours of insurable employment to have a claim for Employment Insurance benefits established under section 7 of the Act.
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> [29] At the end of his employment on October 27, 2013, the Appellant was entitled to receive regular benefits until April 26, 2014. The severance pay was allocated from October 27, 2013, to May 30, 2014, that is, to 31 weeks. During that time, the Appellant did not receive benefits. The benefit period was subsequently extended from April 26, 2014, to November 29, 2014. In order to receive new benefits, the Appellant had to file a new claim, which he did on December 2, 2014.
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> [30] The new qualifying period ran from December 1, 2013, to November 29, 2014. According to the evidence on file, the Appellant received 26 weeks of benefits for the April 28, 2013, claim, that is, four weeks more than if a claim had been established on October 27, 2013. That situation would not have been advantageous, since he would have had to repay four weeks of overpaid benefits.
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> [31] It is recognized that the number of hours required in an economic region is related to the region's unemployment rate. The Appellant resided in the Montreal region, where the unemployment rate was 8.4 % and therefore required 595 hours of insurable employment to qualify for benefits.
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> [32] To meet the requirements of subsection 7(2) of the Act, the Appellant must not be a new entrant or re-entrant to the labour force and must meet the prescribed requirements, namely that he had had during his qualifying period at least the number of hours of insurable employment set out in the table at paragraph 7(2)(*b*) of the Act.
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> [33] The Appellant was not a new entrant or re-entrant to the labour force because he had accumulated at least 490 hours of insurable employment in the 52 weeks before his qualifying period. He had to accumulate the required number of insurable hours during his qualifying period, from December 1, 2013, to November 29, 2014, to be entitled to receive benefits, that is, 595 hours, as indicated in the table at paragraph 7(2)(*b*) of the Act. During that time, he accumulated only six hours of insurable employment.

[13] The General Division did not explain why the qualifying period ran from December 1, 2013, to November 29, 2014, except in the conclusion at paragraph 30 of the decision. In addition, the General Division failed to explain how the qualifying period was established or the effect thereof. Moreover, the Applicant had submitted to the General Division

that the Commission's decision was abusive, arbitrary and discriminatory, but the General Division failed to address this argument.

[14] After reviewing the appeal docket, the General Division's decision and the Applicant's arguments, le Tribunal concludes that the appeal has a reasonable chance of success.
The Applicant raised several questions of fact and of law concerning the General Division's interpretation and application of sections 7 and 8 of the *Employment Insurance Act* whose responses might justify setting aside the decision under review.

CONCLUSION

[15] The Tribunal grants leave to appeal.

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

[17] I invite the parties to provide submissions on whether a hearing is appropriate and, if so, what type of hearing, as well as on the merits of the appeal.

Shu-Tai Cheng
Member, Appeal Division