Citation: ***W. N. v. Canada Employment Insurance Commission*****, 2015 SSTAD 1468**

Date: December 22, 2015

File number: AD-15-1147

APPEAL DIVISION

Between:

W. N.

Applicant

and

Canada Employment Insurance Commission

Respondent

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

REASONS AND DECISION

INTRODUCTION

[1] On September 21, 2015, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal on his disqualification from receiving benefits and the imposition of a penalty and violation. The Canada Employment Insurance Commission (Commission) had determined that the Applicant had voluntarily left his employment, did not notify the Commission when he refused an offer of employment and did not declare certain income from employment.

[2] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on October 27, 2015. The Application does not state on what date the Applicant received the GD decision.

[3] The parties were asked, by letter dated November 5, 2015, to provide written submissions by November 26, 2015 on whether leave should be granted or refused and, in particular:

> a) What specific errors in the General Division decision is the Applicant relying upon? (Provide paragraph number and describe the exact error asserted.)

This letter also stated: "Please note that if you do not provide submissions by the specified date, the Tribunal Member may make a decision based on the information already on file."

[4] The Applicant did not respond, although he did call the Tribunal on November 16, 2015 to ask for clarification on the November 5, 2015 letter, which he was given. The Respondent made submissions. The employer did not request to be added as a party.

ISSUES

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

LAW AND ANALYSIS

[6] Pursuant to subsections 57(1) and (2) of the *Department of Employment and Social Development Act* (DESD Act), an application must be made to the AD within 30 days after the

day on which the decision appealed from was communicated to the appellant. Further, 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.

[7] 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."

[8] 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."

[9] 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.

[10] The Application was date stamped October 27, 2015. The GD decision was sent to the Applicant under cover of a letter dated September 23, 2015.

[11] The Applicant did not state on what day he received the GD decision.

[12] Under paragraph 19(1)(a) of the *Social Security Tribunal Regulations*, I deem that the GD decision was communicated to the Applicant 10 days after the day on which it was mailed to him on September 23, 2015. Accordingly, I find that the decision was communicated to the Applicant on October 5, 2015, taking into consideration that 10 days after September 23, 2015 falls on a weekend.

[13] The Application was, therefore, filed 22 days after it was communicated to the Applicant, which is within the 30-day limit.

[14] 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.

[15] The Application states as reasons for the appeal that the Applicant does not have the money to pay for the overpayment and that he did not know he had to report vacation pay and that he quit his job.

[16] The Application does not make reference to subsection 58(1) of the DESD Act, and it is not clear to me how the GD is alleged to have erred. The Applicant was asked to provide details on what specific errors in the GD decision are being asserted (with paragraph number and description of exact error). The Applicant did not respond to this request.

[17] The issue before the GD was the Applicant's disqualification due to voluntary leaving, overpayment, penalty and violation.

[18] During the GD hearing, the Applicant advanced similar arguments to those in the Application.

[19] The GD stated the correct legal test for voluntary leaving at paragraphs [43] to [50] of its decision. It stated the correct legal tests for penalty and violation at paragraphs [51], [55] to [61].

[20] The Applicant does not state how the GD is alleged to have erred other than repeating his position that he did not realize he needed to report and that he cannot afford to repay the amount owing. In essence, the Applicant seeks to reargue his case before the AD.

[21] The Respondent submitted that leave to appeal must be denied for the following reasons:

a) The Applicant appears to be asking the AD to review a decision of the GD anew, looking for a different outcome;

b) On all issues before the GD (voluntary leaving, penalty for providing false representations and violation), the GD decision applied the legislation to the facts of the case, and there is no evidence that a breach of natural justice exists;

c) The GD decision is reasonable and correct; and

d) The $8,468 overpayment and $2,490 penalty are the correct amounts involved in the issue under appeal.

[22] Once leave to appeal has been granted, 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*. It is in this context that the AD must determine, at the leave to appeal stage, whether the appeal has a reasonable chance of success.

[23] 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 or 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.

[24] In order to have a reasonable chance of success, the Applicant must explain how at least one reviewable error has been made by the GD. The Application is deficient in this regard, and I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[25] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division