Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *K. C. v. Canada Employment Insurance Commission,* 2016 SSTADEI 101

Tribunal File Number: AD-16-109

BETWEEN:

K. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY:: Shu-Tai Cheng

DATE OF DECISION: February 23, 2016

REASONS AND DECISION

INTRODUCTION

[1] On December 21, 2015, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal on whether he had sufficient hours of insured employment to qualify for employment insurance (EI) benefits pursuant to section 7 of the *Employment Insurance Act* (EI Act). The Canada Employment Insurance Commission (Commission) had determined that the Applicant had 882 hours of insurable employment in his qualifying period when he needed 910 hours.

[2] The GD decision was sent to the Applicant under cover of a letter dated December 22, 2015. The Applicant stated that he received the GD decision on December 31, 2015.

[3] The Applicant filed an incomplete application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on December 31, 2015.

[4] The Tribunal advised the Applicant that his file was incomplete, by letter dated January 7, 2016. He was given 30 days to provide the missing information. He sent a response on January 18, 2016. On this basis, the Application was treated as complete. It was filed within the 30 day time limit.

[5] The Applicant sent other documents to the Tribunal on January 20, 2016 and February 18, 2016.

ISSUES

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

LAW AND ANALYSIS

[7] 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.

[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.

[11] The Applicant's reasons for appeal can be summarized as follows:

a) The GD failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, in that professors are not given credit for all of their hours of work; and

b) The GD based its decision on erroneous findings of fact, in that it failed to recognize the evidence that the extra hours that professors work put the Applicant's claim well over the hours required.

[12] 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 responded to this request by stating that the EI system is unjust and that professors put much more time into their work than is stated in the Records of Employments (ROE). The Applicant sent in hundreds of pages of supporting documents, as examples of the exams that professors mark during unrecorded hours of work, often during holidays. The Applicant suggested that the GD Member did not fully understand what he attempted to explain at the GD hearing.

[13] The issue before the GD was whether the Applicant had sufficient hours of insured employment to qualify for employment insurance benefits pursuant to section 7 of the Act.

[14] During the GD hearing, the Applicant advanced similar arguments to those in the Application. The Applicant's evidence was included in the GD decision on pages 5 and 6. The Applicant's submissions before the GD were summarized on page 6 and discussed at pages 7 and 8 and include "that the system is somewhat unfair to teachers like him who have to work a lot of hours in preparation and correcting for which they are not paid and those hours are not recorded so that at the end they have difficulty getting enough official hours".

[15] The GD stated the correct legislative basis for finding that the Applicant had accumulated 882 hours of insurable employment, while as a new entrant or re-entrant he needed 910 insurable hours in order to qualify for regular benefits. These findings were made based on the material before the GD.

[16] The GD decision concluded as follows:

> [26] The Tribunal Member finds that in accordance with section 7 of the Act the Claimant did not have sufficient hours of insured employment to establish a claim.
>
> [27] The Tribunal Member finds that although he is very sympathetic with the plight of the Claimant and wishes he could assist with the situation in which the Claimant finds himself that the legislation offers no basis with which to allow the appeal.

[17] The GD decision also cited two CUB decisions for the proposition that even in a sympathetic case, the GD does not have any discretion on the insurable hours required under the EI Act and cannot ignore the law.

[18] The Applicant suggests that the GD failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction and based its decision on erroneous findings of fact that it made in a perverse or capricious manner or without regard for the material before it. The reasons given for both these grounds of appeal are that professors are not given credit for all of their hours of work and the extra hours that professors work put the Applicant's claim well over the hours required.

[19] While the Applicant's frustration is understandable, the GD could not ignore the law and did not have any discretion to change the Applicant's insurable hours.

[20] Pursuant to sections 90 and 103 of the EI Act only the Tax Court has jurisdiction over "how many hours an insured person has had in insurable employment". The GD did not have the jurisdiction to make the determination that the Appellant was seeking (i.e. that he had at least 910 insurable hours, rather than 882 insurable hours established in his claim).

[21] Similarly, the AD does not have the jurisdiction to increase the Applicant's insurable hours above that which was established by the ROEs applicable to the qualifying period.

[22] The appropriate remedy for the Applicant, to seek an increase in the hours he had in insurable employment, may have been to ask for a ruling of the Tax Court under section 90 of the EI Act.

[23] The Applicant suggested, before the GD, that he hoped that the EI system would be changed so that people in his situation would be better able to qualify for benefits. The Tribunal, although sensitive to these arguments, is bound by the *Employment Insurance Act* and the *Regulations* and is unable to render a contrary decision. Only Parliament has the authority to change the current legislation.

[24] For the most part, the Application repeats the Applicant's evidence and submissions before the GD. The Applicant seeks to reargue his case before the AD.

[25] 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.

[26] 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.

[27] 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

[28] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division