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

Citation: *K. L. v. Canada Employment Insurance Commission,* 2016 SSTADEI 104

Tribunal File Number: AD-15-1156

BETWEEN:

K. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: February 24, 2016

Canada

REASONS AND DECISION

INTRODUCTION

[1] On September 29, 2015, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) refused an extension of time which was required for the Applicant to appeal a reconsideration decision of the Canada Employment Insurance Commission (Commission). The Commission had refused to extend the time for the Applicant to request reconsideration of a Commission decision in December 2013.

[2] The GD decision was sent to the Applicant under cover of a letter dated October 2, 2015. He stated that he received the GD decision on October 26, 2015.

[3] The Applicant filed a letter with the Tribunal on October 30, 2015 requesting an extension of time within which to seek legal advice prior to appealing. He sent in further documents on November 10, 2015.

[4] On November 25, 2015, the AD granted an extension of time until December 18, 2015 within which to file an appeal.

[5] The Applicant filed an incomplete application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on December 17, 2015.

[6] The Tribunal advised the Applicant that his file was incomplete, by letter dated January 7, 2016. He was given to February 8, 2016 to provide the missing information. He sent a response on February 8, 2016. On this basis, the Application was treated as complete.

ISSUES

[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 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.

[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 Applicant’s reasons for appeal can be summarized as follows:

a) He filed for employment insurance (EI) benefits in 2011 and received benefits;

b) He was notified on December 3, 2013 that the Commission had determined that he failed to declare earnings and had made false representations; this resulted in an overpayment, disqualification, a notice of violation and penalty;

c) He had communications with Service Canada and the Commission and began to repay the monies;

d) He doubts the amounts that the Commission has calculated, and he has not received satisfactory answers to his questions;

e) He appealed the Commission's December 2013 decision in February 2015;

f) In March 2015, the Commission refused to review his appeal because it was late; and

g) He is willing to pay back the EI benefits that he received but he disputes the nearly $7000 bill.

[13] 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 restating the facts that he is relying upon.

[14] The issue before the GD was whether to grant an extension of time within which the Applicant could file an appeal from the Commission decision of March 11, 2015. That decision denied an extension of time to make a request for reconsideration of the December 2013 decision of the Commission. The Commission denied an extension of time because it was not satisfied that there was a reasonable explanation for requesting a period of extension of 399 days or that the Applicant had demonstrated a continuing intention to request reconsideration.

[15] The Applicant's Notice of Appeal to the GD was filed incomplete on June 2, 2015 and completed on June 26, 2015. It was completed 83 days after receiving the Commission's March 2015 decision.

[16] In the Notice of Appeal to the GD the Applicant advanced similar arguments to those in the Application. They are noted in the GD decision.

[17] The GD stated the correct law and jurisprudence when considering whether to grant an extension of time.

[18] The GD decision analyzed the factors to be considered and the interests of justice and it concluded that:

a) The Applicant did not have a continuing intention to pursue the appeal to the GD;

b) The Applicant did not present an arguable case;

c) The Applicant did not provide a reasonable explanation for the delay in filing an appeal at the GD; and

d) Prejudice would be caused to the other parties if the extension of time was granted.

[19] The Applicant was asked to specify what the errors in the GD decision were. His answers have repeated the historical facts from his point of view and that the current situation is not entirely his doing. He still considers it unfair that EI benefits were paid to in 2011 and no problem was communicated to him for two years. When he became aware of the disqualification and overpayment, he tried in vain to discuss the matter with the Commission. When he concluded that his questions were not being answered, he appealed the decision to the Commission and was told he was too late.

[20] 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.

[21] In the last correspondence from the Applicant, he stated: "During review of the past records from the Tribunal it is indicated that I had admitted to misrepresenting my earnings to
E.I which was not indicated anywhere that I have seen or am aware of, a copy or some documentation of this admission would be greatly appreciated."

[22] By this, the Applicant may be suggesting that the GD 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. However, in document GD3, at page 17, a telephone call between the Applicant and the Commission is detailed. It states: "Claimant stated that he agrees he didn't declare his earnings or his work for the five weeks and is willing to pay that back …"

[23] The GD’s finding of fact that the Applicant admitted that he did not declare his work and earnings was not made in a perverse or capricious manner or without regard for the material before it.

[24] If leave to appeal is granted, then 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 anew. 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.

[25] 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.

[26] 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

[27] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division