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

Citation: *L. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 122

Tribunal File Number: AD-16-156

BETWEEN:

L. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY:: Shu-Tai Cheng

DATE OF DECISION: March 3, 2016

REASONS AND DECISION

INTRODUCTION

[1] On November 20, 2015, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal of the reconsideration decision of the Canada Employment Insurance Commission (Commission). The Applicant disputed the benefit rate that the Commission had calculated on her claim for self-employment special benefits (maternity/parental).

[2] The Applicant attended the GD hearing, which was held by teleconference.

[3] The GD decision was sent to the Applicant under cover of a letter dated December 1, 2015.

[4] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on January 11, 2016.

ISSUES

[5] Whether the Application was filed within the 30-day time limit.

[6] If it was not, whether an extension of time should be granted.

[7] Then 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.

Was the Application Filed within 30 days?

[12] The Application was filed on January 11, 2016. The Applicant stated that she received the GD decision on December 1, 2015, but this must be an error. The GD decision was sent to the Applicant on December 1, 2015 by regular mail, and it could not have arrived at her home address on the same day.

[13] Under paragraph 19(1)(a) of the *Social Security Tribunal Regulations*, I deem that the decision of the GD was communicated to the Applicant 10 days after the day on which it was mailed to her on December 1, 2015 which is December 11, 2015.

[14] Therefore, I find that the decision was communicated to the Applicant on December 11, 2015.

[15] Thirty (30) days from December 11, 2015 is January 10, 2015 which was a Sunday. Therefore, the deadline for filing the Application was January 11, 2016, which is the date that the Application was received.

[16] As such, the Application was filed within the time limit and an extension of time is not necessary.

Leave to Appeal

[17] The Application does not state on which paragraph of 58(1) of the DESD Act the Applicant relies. Rather, it includes one point which can be summarized as follows: The GD decision was made based on the current legislation, but either the current legislation does not make sense or exceptions need to be made for self-employed persons.

[18] The Applicant requests that someone listen to her and "think outside of the box".

[19] The Applicant does not assert specific errors in the GD decision aside from arguing that the GD did not comment on anything outside of the written legislation and that her situation requires personal consideration.

[20] The Applicant attended the GD hearing held by telephone conference and gave evidence and made submissions. The issue before the GD was whether the Applicant's 2015 self- employment earnings could be included with her 2014 earnings to determine her maternity and parental benefit rate pursuant to the *Employment Insurance Act* (EI Act).

[21] The GD stated the correct law when considering this issue. It noted the Applicant's evidence and her submissions. Based on the evidence, the GD found that the Applicant's qualifying period, as a self-employed person, was the calendar year 2014, which was the year immediately before the year during which her benefit period began, pursuant to subsection 152.08 of the EI Act. On this basis, the GD found that the Applicant's $49,840 earnings from January 1, 2015 to June 10, 2015 are outside her qualifying period as a self-employed person, and therefore cannot be included in the calculation of her benefit rate, pursuant to subsection 152.16(1) of the EI Act.

[22] The Applicant argues that the GD Member only referred to the current legislation and did not give consideration to the fact that the EI legislation needs to be changed as it relates to self- employed persons making maternity/parental leave claims. She states that the legislation does not make sense, and either the legislation needs to be changed or exceptions to the legislation need to be made.

[23] Essentially, the Applicant seeks to reargue her case before the AD and asks the AD to grant an exception to the legislation or find that the legislation needs to be changed.

[24] The Tribunal, whether the AD or the GD, 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.

[25] 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.

[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