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

Citation: *W. W. v. Canada Employment Insurance Commission,* 2016 SSTADEI 158

Tribunal File Number: AD-15-879

BETWEEN:

W. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: March 22, 2016

Canada

REASONS AND DECISION

INTRODUCTION

[1] On June 8, 2015, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal of a decision of the Canada Employment Insurance Commission (Commission). The Commission had denied employment insurance (EI) benefits, because the Applicant was late completing his reports and did not show good cause for being late.

[2] The Applicant attended the GD hearing, which was held by teleconference. The Respondent did not.

[3] The GD decision was sent to the Applicant under cover of a letter dated June 9, 2015.

[4] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on July 31, 2015. The Application states that he received the GD decision on June 30, 2015.

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 Section 57 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.

[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:

1. The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

2. The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

3. 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 July 31, 2015. The GD decision was sent to the Applicant under cover of a letter dated June 9, 2015 and, according to the Application, was received by the Applicant on June 30, 2015.

[13] Thirty (30) days from June 30, 2015 is July 30, 2015. Therefore, the 30-day period ended on July 20, 2015. As such, the Application was not filed within the 30-day time limit. It was filed one (1) day late.

Extension of Time

[14] In order for the Application to be considered, an extension of time will be needed.

[15] In *X*, 2014 FCA 249, the Federal Court of Appeal set out the test when considering whether to allow an extension of time, as follows, in paragraph 26:

> In deciding whether to grant an extension of time to file a notice of appeal, the overriding consideration is whether the interests of justice favour granting the extension. Relevant factors to consider are whether:
>
> (a) there is an arguable case on appeal;

(b) special circumstances justify the delay in filing the notice of appeal;

(c) the delay is excessive; and

(d) the respondent will be prejudiced if the extension is granted.

[16] The Tribunal did not require the Applicant to request an extension of time in writing.

[17] Given the short length of the delay and in the interests of justice, I grant an extension of time for the filing of the Application.

Leave to Appeal

[18] The Application does not state what errors were in the GD decision. It repeats and reargues the Applicant's factual situation. Therefore, the Tribunal was unable to discern on which paragraph of 58(1) the DESD Act the Applicant was relying.

[19] For this reason, he was asked to provide additional information, as follows:

> To complete the application, the Tribunal needs the following information in writing:
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> - **Reasons for the appeal:**
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> Explain in detail **<u>why</u>** you are appealing the decision of the General Division. Only the following 3 reasons can be considered under the law:
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> Reason #1: ***The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.*** For example, an appellant submitted a Record of Employment, and the document was not included in the appeal file.
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> Reason #2: ***The General Division made an error in law in its decision.*** For example: the Member of the General Division based its decision on the wrong section of the applicable law.
>
> Reason #3: ***The General Division made an important error regarding the facts contained in the appeal file.*** For example, the Member of the General Division indicated in the decision that there was no Record of Employment submitted by the appellant, when one had been submitted and was in the appeal file.
>
> Please identify which of the reason(s) apply to the case and provide as much detail as possible. It is not sufficient to simply indicate that there was an error or that natural justice was not respected. You must

explain what the error was or how natural justice was not respected. You can refer to specific pages of documents on file or to paragraphs in the General Division decision.

- **Why the Appeal Division should give you permission to file an appeal:** You must first request the permission of the Appeal Division to file an appeal. In addition to identifying the reasons for the appeal, you must also explain why the application to the Appeal Division has a reasonable chance of success.

[20] The Applicant responded to this request but again repeated the circumstances for his being late filing documents to support his EI claim. He stated that he disagrees with the statement in the GD decision: "It cannot be said that the Appellant acted as a reasonable and prudent person."

[21] Although, the Applicant does not state on which paragraph of 58(1) of the DESD Act he relies, the Tribunal will proceed on the basis that the Applicant is asserting an error of mixed fact and law and, therefore, relies on paragraphs of 58(1)(b) and (c) of the DESD Act

[22] The issue before the GD was the denial of benefits by the Commission because the Applicant did not return his reports within the allowable period of time under sections 10 and 50 of the *Employment Insurance Act* and section 26 of the *Employment Insurance Regulations*.

[23] The GD stated the correct law and jurisprudence when considering the issues of late filing and good cause, at pages 2 to 4 and 7 to 9 of its decision.

[24] The GD noted that the Applicant testified at the GD hearing. The GD decision, at pages 4 to 6, summarized the evidence in the file, the testimony given at the hearing and the Applicant's submissions. The Applicant made the same submissions before the GD as he made in the Application and the response to the request to clarify his reasons for appeal.

[25] The GD decision stated:

> [27] In the present case the Tribunal finds that the Appellant waited until July 3, 2014 to file his report for the period beginning April 20, 2014 without any consultation with the Commission. In this case he failed to prove good cause for the entire period of delay in filing his reports. The Appellant advised the Tribunal that his internet log-in attempts were kicked out and that was because his first reports were in fact late.
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> [28] The Appellant made no successful attempt to satisfy himself of his rights and obligations under the Act by contacting the Respondent. He made no efforts throughout the entire delay to determine what his rights and responsibilities under the Act were. It cannot be said that the Appellant acted as a reasonable and prudent person. The Appellant stated that he was unfamiliar with the process and the system was not user friendly. The Appellant provided the Tribunal with a copy of his benefit statement dated May 7, 2014 (GD5-2) where he stated the instructions were unclear. The Tribunal finds that the benefit statement is clear and unambiguous. The statement in capitalized letters note "IMPORTANT – COMPLETE YOUR REPORTS ON THE INTERNET AT: WWW.SERVICE CANADA.GC.CAEIREPORTING. IF YOU DO NOT HAVE ACCESS TO THE INTERNET, USE TELEPHONE REPORTING SERVICE: 1-800-531-7555". The benefit statement provides further instructions including the note in capital letters that the Appellant MUST COMPLETE HIS REPORTS ON OR AFTER SATURDAY 03-05-2014, and if he does not have access to the internet to contact the EI telephone information service at 1-800-206-7218 or by visiting a Service Canada Center.
>
> [29] The Tribunal is unable to accept that a reasonable person in this situation would have continued to delay in filing his reports for benefits for approximately 2 months. The Appellant's attempt to log in to the internet reporting system in July 3, 2014 failed since the report had to be processed at the latest on May 17, 2014, pursuant to subsection 26(1) of the Regulations. The Tribunal finds that a reasonable person in a similar situation would have checked with Service Canada to satisfy himself as to his exact rights and obligations in regard to this before July 3 of 2014. This he failed to do.

[26] The Applicant's submissions in support of the Application reargue the facts before the GD. The GD is the trier of fact and its role includes the weighing of evidence and making findings based on its consideration of that evidence. The AD is not the trier of fact.

[27] The Application, essentially, reargues the Applicant's case and his submissions on the facts before the AD.

[28] 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.

[29] 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.

[30] I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[31] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division