



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. P. v. Canada Employment Insurance Commission*, 2016 SSTADEI 143

Tribunal File Number: AD-15-101

BETWEEN:

E. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY:: Shu-Tai Cheng

DATE OF DECISION: March 14, 2016

REASONS AND DECISION

INTRODUCTION

[1] On February 5, 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 Commission had imposed a disqualification pursuant to sections 29 and 30 of the *Employment Insurance Act* for having left her employment without just cause.

[2] The Applicant did not attend the GD hearing, although she was notified of it and received the Notice of Hearing. According to the GD decision, the GD Member connected to the video conference at 1:21p.m. February 5, 2015; the video conference was schedule to commence at 1:30p.m., and the Applicant was notified on December 2, 2014 to arrive at 1:00p.m., and present herself to the reception of the video conference site; the Member waited until 1:45p.m., and concluded that the Applicant was not attending. The Tribunal did not receive any communication from the Applicant prior to the hearing requesting an adjournment or a delay in the hearing.

[3] The GD decision was sent to the Applicant under cover of a letter dated February 12, 2015.

[4] The Applicant called the Tribunal on February 17, 2015 to advise that she had been unable to attend the hearing due to a job interview. She asked whether the hearing had proceeded without her and asked for a callback.

[5] The Applicant filed an incomplete application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on March 6, 2015.

[6] The Tribunal advised the Applicant that her file was incomplete, by letter dated December 2, 2015. She was given to January 4, 2016 to provide the missing information. She did not respond.

ISSUE

[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 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

Applicant did not attend the videoconference hearing before the GD because she had to attend a job interview earlier in the day; therefore, she is asking for another opportunity (a meeting) to explain why she left her job.

[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 did not respond and, as such, no other reasons were given to support the Application.

GD Decision

[14] The GD proceeded with the hearing only after being satisfied that the Applicant had received the Notice of Hearing and that the Tribunal had not received any communications from her requesting an adjournment or a delay in the hearing. The GD proceeded on the basis of the record which it determined was adequate to consider the matter before it.

[15] The GD stated the correct law and jurisprudence when considering the issue of voluntary leaving. It noted that the Applicant argued that she left her job because her employer would not give her the opportunity to move into a floor/counter position from her custodial position or the opportunity to train for one of these positions. She believed that she was treated unfairly and pushed until she had no choice but to leave.

[16] The GD decision had been finalized and sent to the Applicant before she contacted the Tribunal to ask to reschedule the GD hearing.

Reasons for Appeal

[17] The Applicant's reasons for appealing to the AD are that she did not attend the GD hearing and would like an opportunity to explain why she left her job. However, this is not a ground of appeal under the DESD Act.

[18] For this reason, she was asked to provide additional information, as follows:

To complete the application, the Tribunal needs the following information in writing:

- **Reasons for the appeal:**

Explain in detail **why** you are appealing the decision of the General Division. Only the following 3 reasons can be considered under the law:

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.

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.

[19] The Applicant did not respond to this request and did not provide additional information on her reasons for appeal.

[20] 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.

[21] 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.

[22] 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

[23] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division