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

Citation: *S. G. v. Canada Employment Insurance Commission,* 2016 SSTADEI 148

Tribunal File Number: AD-16-206

BETWEEN:

S. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: March 15, 2016

REASONS AND DECISION

INTRODUCTION

[1] On December 15, 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 benefits, because it had determined that the Applicant had voluntarily left her employment without just cause.

[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 December 16, 2015.

[4] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on January 26, 2015. The Application states that she received the GD decision on December 23, 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:

> (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 26, 2016. The GD decision was sent to the Applicant under cover of a letter dated December 16, 2015 and was received by the Applicant on December 23, 2015.

[13] Thirty (30) days from December 23, 2015 is January 22, 2016. Therefore, the 30-day period ended on January 22, 2016. As such, the Application was not filed within the 30-day time limit. It was filed 4 days 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:
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> (a) there is an arguable case on appeal;
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> (b) special circumstances justify the delay in filing the notice of appeal;
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> (c) the delay is excessive; and
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> (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 states that the GD made erroneous findings of fact, in particular, about the working conditions which the Applicant argues were unsafe and unhealthy. Therefore, the Applicant relies on which paragraph of 58(1)(c) of the DESD Act.

[19] In particular, the Applicant submits that the specific errors included:

a) She had just cause to voluntarily leave her employment due to unsafe and unhealthy working conditions;

b) She had no reasonable alternative to leaving her employment as she had taken steps to try and correct the situation by cleaning the dirty working conditions and complaining to her manager;

c) The situation continued and she was still being constantly required to work in conditions that constituted a danger to her health and safety;

d) The workplace was so intolerable that she could not stay while she looked for alternative employment; and

e) This was not a situation of not being accustomed to a “non-office" environment. She has worked in other similar environments and is capable of working in a bakery department.

[20] The issue before the GD was the disqualification imposed by the Commission after determining that the Applicant had voluntarily left her employment without just cause.

[21] The GD stated the correct law and jurisprudence when considering the issues of voluntarily leaving and just cause, at pages 3 to 5, 7 and 9 of its decision.

[22] The GD noted that the Applicant testified at the GD hearing. The GD decision, at pages 5 to 7, 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 is summarized in subparagraphs [19] a) to d), above.

[23] The GD decision stated:

> [24] In the case at bar, the undisputed evidence from the Respondent and the Appellant indicates that the Appellant voluntarily left her employment on April 12, 2015.
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> [25] The Tribunal finds that the Appellant voluntarily left her employment.
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> [26] Did the Appellant have no reasonable alternative to leaving? The evidence before the Tribunal indicates that she did.
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> [27] As the Respondent submitted, a reasonable alternative would have been to seek and secure subsequent employment prior to leaving.
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> [28] The Tribunal considered the Appellant’s statement that the company did not provide any safe or healthy practices in the bakery department.
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> [29] The Tribunal finds that the above reason does not amount to just cause for leaving one’s employment.
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> [30] The Tribunal prefers the submission of the Respondent that the Appellant did not exhaust all reasonable alternatives prior to leaving. The Respondent submitted that a reasonable alternative would be to seek and secure other employment prior to resigning.

> [31] The Appellant also provided that she has contributed to employment insurance for years but is now being denied assistance.
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> [32] The Tribunal notes that contributing to the Employment Insurance system does not automatically entitle someone to benefits. All claimants must demonstrate that they meet the entitlement condition as outlined in the Act.
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> [33] The Tribunal also finds the conditions at the Appellant's workplace were not so intolerable that she had to leave her work prior to obtaining alternate employment. The Tribunal prefers and accepts the employer's submission that the workplace is frequently visited by Provincial and City inspectors for acceptable standard adherence and that all requirements were met.
>
> [34] The Tribunal finds that the Appellant had reasonable alternatives to leaving her employment. She could have looked for and obtain work prior to quitting her employment.
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> [35] It is possible that the Appellant had good cause for leaving her employment because she did not like the working environment in the bakery department. It understandable that someone coming from and office environment into a bakery might find the adjustment difficult if not impossible. But good cause does not equal just cause as stated in the Act and defined by jurisprudence.

[24] 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.

[25] In subparagraph [19] e), above, the Applicant's argument is that her leaving was not a situation of not being accustomed to a "non-office" environment. I note that the GD decision stated that "it is possible that" the Applicant "coming from and office environment into a bakery might find the adjustment difficult if not impossible". However, this (that the Applicant was not accustomed to a non-office environment) was not a finding of fact upon which the GD based its decision.

[26] Not every erroneous finding of fact will fall within the terms of paragraph 58(1)(c) of the DESD Act. An erroneous finding of fact upon which the GD does not base its decision would not be caught, nor would one that is not made in a perverse or capricious manner or without regard for the material before the Tribunal.

[27] The Application, essentially, reargues the Applicant's case and her 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] 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

[31] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division