



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *F. B. v. Canada Employment Insurance Commission*, 2016 SSTA DEI 151

Tribunal File Number: AD-15-106

BETWEEN:

F. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: March 16, 2016

REASONS AND DECISION

DECISION

[1] The Social Security Tribunal of Canada (Tribunal) refuses leave to appeal before the Appeal Division.

INTRODUCTION

[2] On January 26, 2015, the Tribunal's General Division (GD-SST) refused an extension of time to file an appeal.

[3] In November 2013, the Commission found that the Applicant could not receive sickness benefits as of November 10, 2013, as he had already received 15 weeks of benefits, the maximum period under paragraph 12(3)(c) of the *Employment Insurance Act*.

[4] On June 11, 2014, the Commission denied the Applicant's request for reconsideration. The Applicant appealed this decision on November 17, 2014, after the time limit set out in subsection 52(2) of the *Department of Human Resources and Skills Development Act* had passed.

[5] The Applicant's Notice of Appeal was filed with the GD-SST over four (4) months past the deadline.

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

ISSUES

[7] Was the Application filed within the prescribed time?

[8] Does the appeal have a reasonable chance of success?

THE LAW AND ANALYSIS

Date of Submission of Application

[9] Paragraph 57(2)(a) of the *Department of Employment and Social Development Act* provides that an application for leave to appeal must be filed within 30 days after the day on which the decision is communicated to the appellant.

[10] The GD-SST decision was sent to the Applicant under cover of a letter dated January 27, 2015. The Application does not indicate the date in which the Applicant received the decision.

[11] In accordance with paragraph 19(1)(a) of the *Social Security Tribunal Regulations*, I find that the Applicant received the GD-SST's decision 10 days after the date in which it was mailed, that is February 6, 2015.

[12] The Application was filed on March 6, 2015, 28 days after February 6, 2015; therefore, it was filed within the prescribed time.

Leave to Appeal

[13] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, “[a]n 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”.

[14] Subsection 58(2) of the *Department of Employment and Social Development Act* states that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

[15] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

- (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.

[16] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for the Applicant to meet than the one that must be met on the appeal on the merits. At the leave stage, the Applicant does not have to prove the case.

[17] The Tribunal will grant leave to appeal if any of the above grounds of appeal has a reasonable chance of success.

[18] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction whose response might justify setting aside the decision under review.

[19] In his Application, the Applicant notes:

- (a) The GD-SST's decision contains an incorrect conclusion, specifically, the date on which his appeal was filed;
- (b) He submitted his appeal on November 15, 2015, but the GD-SST states that it was on November 17, 2015 (paragraph 14);
- (c) The error in date is not a clerical error;
- (d) He has a high school education and he did as best he could;
- (e) He does not wish to defend himself against a debt that he does not owe, he simply want to express himself verbally.

[20] The GD-SST's decision states that the Applicant submitted his appeal to the Tribunal's GD on November 17, 2015. This is indeed the date on which the Tribunal received this

document. This date was stamped on the document when the Tribunal received it. The GD-SST decision does not contain an error in date.

[21] The grounds raised and outlined above in paragraphs [13] d) and e) do not present an error of jurisdiction, law, or fact. They are the reasons for which the Appellant was late in filing his appeal to the GD-SST.

[22] It is not up to the Appeal Division member who has to determine whether to grant leave to appeal to reweigh and reassess the evidence submitted before the General Division. Based on my reading of the file and the GD-SST's decision, the reasons that the Applicant has brought up in his Application—that he didn't know what to do and that he didn't owe a debt—have already been brought forth before the General Division.

[23] Mere repetition of the arguments already made before the General Division is not sufficient to show that one of the above grounds of appeal has a reasonable chance of success.

[24] Since the Applicant is not raising any of the grounds of appeal set out in subsection 58(1) of the *Department of Employment and Social Development Act*, the appeal has no reasonable chance of success.

CONCLUSION

[25] The application for leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division