



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. A. v. Canada Employment Insurance Commission*, 2016 SSTADEI 162

Tribunal File Number: AD-15-96

BETWEEN:

R. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

HEARD ON: On the Record

DATE OF DECISION: March 23, 2016

REASONS AND DECISION

INTRODUCTION

[1] On March 7, 2016, the Appeal Division (AD) of the Social Security Tribunal of Canada (Tribunal) granted leave to appeal on the grounds of erroneous findings of fact and a possible breach of natural justice. The decision of the General Division (GD) appealed from relates to the refusal of an extension of time for the Appellant to file an appeal before the GD.

[2] The Tribunal requested the parties' submissions on the mode of hearing, whether one is appropriate and, also, on the merits of the appeal.

[3] The Respondent filed submissions which recommend that in the interest of procedural fairness, the matter be returned to the GD to be heard on the substantive issue, which is the disqualification imposed by the Commission due to misconduct.

[4] In light of the Respondent's submissions, it was unnecessary for the Appellant to make submissions.

[5] This appeal proceeded on the basis of the record for the following reasons:

- a) The lack of complexity of the issue(s) under appeal; and
- b) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[6] In the circumstances, it is unnecessary to hold an oral hearing at the AD.

ISSUES

[7] Whether the GD based its decision on erroneous finding of facts that it made in a perverse or capricious manner or without regard for the material before it.

[8] Whether the GD breached a principle of natural justice in arriving at its decision.

[9] Whether the AD should dismiss the appeal, give the decision that the GD should have given, refer the case to the GD for reconsideration or confirm, rescind or vary the decision of the GD.

LAW AND ANALYSIS

[10] Subsection 58(1) of the *Department of Employment and Social Development Act* (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.

[11] Leave to appeal was granted on the basis that the Appellant had set out reasons which fall into the enumerated grounds of appeal and that at least one of the reasons had a reasonable chance of success, specifically, under paragraphs 58(1)(a) and (c) of the DESD Act.

[12] In particular, the decision granting leave to appeal stated:

[23] The Applicant's submissions on erroneous findings of fact, namely that the GD found that there was no evidence of communications except an incomplete appeal, no evidence of the Applicant's continuing intention to pursue the appeal and no reasonable explanation for the delay, are worthy of further consideration. These findings seem at odds with the GD file as detailed in paragraphs [3] to [8] above.

[24] I note that the NoA before the GD is dated August 7, 2014 and date stamped August 11, 2014, by Service Canada. The NoA was received by the Tribunal on August 25, 2014. The reconsideration decision was dated July 21, 2014 and stated that the Applicant had until 30 days after he received this decision to file an appeal. The reconsideration decision would have taken days to reach the Applicant by regular mail.

[25] Therefore, I find that the NoA was filed with the GD of the Tribunal within the 30-day period, but it was missing a copy of the reconsideration decision and the date that it was received. The Appellant was asked, by letter dated August 27, 2014, to

provide a copy of the reconsideration decision “without delay”, and he did so on September 18, 2014.

[26] The September 26, 2014 Tribunal letter warned that if an explanation of the delay in filing NoA was not provided by October 26, 2014, the GD Member would grant or refuse the request for an extension of time based on the information already in the file.

[27] The Applicant replied by letter with information on each of the points requested. This letter was date stamped October 10, 2014 by the Tribunal.

[28] In the circumstances, whether the treatment of the Applicant’s appeal before the GD breached the principles of procedural fairness should be also considered.

[29] On the grounds that there may be a breach of natural justice and erroneous findings of fact made in a perverse and capricious manner or without regard to the material before the GD, I am satisfied that the appeal has a reasonable chance of success. The Respondent agrees that the Appellant was not late in submitting her appeal to the GD and states that the matter should be returned to the GD to be heard on the merits.

[13] The GD found that the appeal was incomplete and late. I find that the NoA was not late. Also, the Appellant completed the appeal within three weeks of being advised what was needed.

[14] The GD refused to grant an extension of time based on a mechanical application of the *Gattallero* factors (*Canada (Minister of Human Resources Development) v. Gattallero*, 2005 FC 883). It found no evidence of the Applicant’s continuing intention to pursue the appeal, no reasonable explanation for the delay and no arguable case.

[15] The Respondent submitted that the Applicant did show a continued intention to pursue an appeal and had a reasonable explanation for the delay. I agree, based on my review of the file.

[16] Therefore, the GD decision was based on erroneous findings of fact that the GD made in a perverse or capricious manner or without regard for the material before it and an error of law. In addition, the GD failed to observe a principle of natural justice, specifically procedural fairness.

[17] Subsection 59(1) of the DESD Act sets out the powers of the AD. It states:

The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

[18] Considering the submissions of the parties, my review of the GD decision and the appeal file, I allow the appeal. Because this matter has not been heard on the merits and may require the parties to present evidence, a hearing before the GD is appropriate.

CONCLUSION

[19] The appeal is allowed. The case will be referred back to the General Division of the Tribunal for reconsideration.

Shu-Tai Cheng
Member, Appeal Division