



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. L. v. Canada Employment Insurance Commission*, 2016 SSTADEI 153

Tribunal File Number: AD-15-455

BETWEEN:

C. L.

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

INTRODUCTION

[1] On June 26, 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 his employment without just cause.

[2] The Applicant did not attend the GD hearing, although he was notified of it and received the Notice of Hearing. A telephone conference had been scheduled on June 25, 2015. 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 June 29, 2015.

[4] The Applicant called the Tribunal on June 29, 2015 to advise that he had missed the hearing and to ask for it to be rescheduled. He was informed that a decision had been reached and that he should receive it shortly.

[5] The Applicant filed an incomplete application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on July 13, 2015.

[6] The Tribunal advised the Applicant that his file was incomplete, by letter dated December 11, 2015. He was given to January 11, 2016 to provide the missing information. He 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] The incomplete Application was filed within 17 days of the GD decision being sent to the Applicant. He was asked to complete the Application by providing missing information by January 11, 2016 and advised that if insufficient material is submitted, the AD may decide the matter on the basis of the material filed as of January 11, 2016.

[10] 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.”

[11] 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.”

[12] 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.

[13] The Application does not state on which paragraph of 58(1) of the DESD Act the Applicant relies. Rather, it includes a short text which can be summarized as follows: The Applicant did not attend the GD telephone conference hearing because of work; therefore, he is asking for a second appeal because he thinks that the Commission did not treat him fairly.

[14] Information in the Tribunal file indicates that the Applicant signed for the GD Notice of Hearing on May 16, 2015 and that he called the Tribunal on June 1, 2015 to say that he had misplaced the Notice of Hearing and wanted another copy of it. His call was returned on June 2, 2015 and a voicemail message with the hearing date, time and details was left. In addition, another copy of the Notice of Hearing was sent to him.

[15] 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

[16] 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 him 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.

[17] The GD stated the correct law when considering the issue of voluntary leaving. It noted that the Applicant argued that he left his job in order to study for exams.

[18] The GD also stated the correct law when considering the issue of insurable hours of work. It noted that the Applicant had accumulated 126 hours of insurable employment while he needed 595 insurable hours to qualify for benefits.

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

Reasons for Appeal

[20] The Applicant's reasons for appealing to the AD are that he did not attend the GD hearing and would like a second chance to appeal because he thinks the Commission treated him unfairly. However, this is not a ground of appeal under the DESD Act.

[21] For this reason, he 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.

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

[23] 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.

[24] 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.

[25] 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

[26] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division