



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *B. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 177

Date: April 4, 2016

**File number: AD-16-304
and AD-16-305**

APPEAL DIVISION

Between:

B. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Shu-Tai Cheng, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] On January 21, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) found that [*translation*] "nothing revealed in these files directly addresses the applicable statutory provisions that the Tribunal is responsible for enforcing" with regard to the *Employment Insurance Act* (Act).

[2] Given that the two events were identical in both of the Applicant's files, the two files were heard at the same time and a decision was rendered.

[3] The decision was communicated to the Applicant in a letter dated January 22, 2016, and the Applicant confirmed receipt on January 27, 2016. The Applicant filed an application for leave to appeal (Application) to the Appeal Division on February 12, 2016, within the prescribed time frame.

ISSUE

[4] The Tribunal must determine whether the appeal has a reasonable chance of success.

THE LAW AND ANALYSIS

[5] 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".

[6] 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".

[7] 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.

[8] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for an 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.

[9] The Tribunal will grant leave to appeal if it is satisfied that the Applicant demonstrates that one of the aforementioned grounds of appeal has a reasonable chance of success.

[10] 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, or relating to a principle of natural justice, the response to which might justify setting aside the decision under review.

[11] In her Application and written submissions, the Applicant notes that:

- (a) The GD failed to observe a principle of natural justice or refused to exercise its jurisdiction.
- (b) Paragraph 48 of the GD's decision states the following:

[48] When the Commission's discretion is specifically contemplated in the Act and the Tribunal finds that the Commission did not adequately exercise this discretion, case law states that the Tribunal may intervene. In this case, however, it is the administrative measures that the Commission applies to claimants' requests that allow the provisions of the Act to be practically circumvented. The Tribunal understands why the Commission would be less than inclined to reveal this way of doing things.

- (c) In this case, the Commission did not apply the necessary administrative measures when exercising its discretionary authority in order to come to a fair decision. The

GD found that the Commission had not adequately exercised its discretionary authority yet failed to intervene.

- (d) Could the Tribunal not employ the discretionary authority granted to it by jurisprudence and return the file to the Commission so that it can be aware of its mistakes regarding the establishment of benefit rates?

[12] Since a leave to appeal proceeding is a preliminary step to a hearing on the merits (in the event that a hearing is necessary), the parties do not have to prove their case. The Tribunal will grant leave to appeal if it is satisfied that one of the grounds of appeal has a reasonable chance of success.

[13] In page 12, the General Division's decision stipulates the following:

[49] The Commission stated that when a payment refusal claim is made over three weeks after the claimant's statement has been processed, the claim must be processed in accordance with section 52 of the Act.

[50] Under section 52 of the Act, a request for reconsideration may be accepted only if either eligibility for payment or payment validity are at issue. In this case, eligibility cannot be at issue because the Claimant's payment could be stopped only if the Claimant requests not to receive a week of benefits. If the Claimant was also eligible to receive payments, then payment validity couldn't be at issue, either. A reconsideration under section 52 of the Act, as stated by the Commission, is not applicable.

[51] The Tribunal's function is to examine the facts and analyse the submitted evidence for the application of the *Employment Insurance Act*. Nothing revealed in these files directly addresses the applicable statutory provisions that the Tribunal is responsible for enforcing

[14] The General Division did not explain which section of the Act prevents the Commission from processing a claim over three weeks after the claim for benefits has been processed. Moreover, the General Division seems to have limited its analysis to subsection 52(2) of the Act, which states what the Commission must do in the event that a person receives money despite not meeting the necessary conditions, or if a person doesn't receive money despite meeting the conditions. However, subsection 52(1) of the Act seems to allow the Commission to reconsider decisions in other situations.

[15] After reviewing the appeal file, the General Division's decision, and the Applicant's arguments, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has raised an issue relating to natural justice, an error in jurisdiction or an error in law, the answer to which may lead to the setting aside of the decision attacked.

CONCLUSION

[16] Leave to appeal is granted.

[17] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[18] I invite the parties to make submissions on the following questions: whether a hearing is appropriate and, if so, the form of hearing; as well as the merits of the appeal.

Shu-Tai Cheng
Member, Appeal Division