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

Citation: *L. W. v. Canada Employment Insurance Commission,* 2016 SSTADEI 183

Tribunal File Number: AD-16-182

BETWEEN:

L. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY:: Shu-Tai Cheng

DATE OF DECISION: April 6, 2016

Canada

REASONS AND DECISION

INTRODUCTION

[1] On December 9, 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 Applicant had been paid 15 weeks of sickness benefits (from January 4, 2015 to April 18, 2015) but had requested that the Commission reconsider its decision and pay him until the end of June 2015. The Commission maintained its decision on the basis that the Applicant had received the maximum of 15 weeks of sickness benefits pursuant to paragraph 12(3)(c) of the *Employment Insurance Act* (EI Act).

[2] The Applicant attended the GD hearing, which was held by videoconference. The Respondent did not attend.

[3] The GD determined that:

a) The legislation is clear that the Applicant can only receive a maximum of 15 weeks of sickness benefits during a given benefit period pursuant to paragraph 12(3)(c) of the EI Act; and

b) The Commission correctly paid sickness benefits to the Applicant from January 4, 2015 to April 18, 2015.

[4] The GD decision was sent to the Applicant under cover of a letter dated December 14, 2015.

[5] The Applicant filed an incomplete application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on January 20, 2016. The Application stated that he received the GD decision on December 21, 2015.

[6] The Tribunal requested additional information from the Applicant by letter dated January 25, 2016 and gave a deadline of February 25, 2016 for the Applicant to provide the

missing information. The Applicant responded by handwritten letter received by the Tribunal on February 5, 2016. On this basis, the Application was treated as complete.

ISSUES

[7] Whether the Application was filed within the 30-day time limit.

[8] If it was not, whether an extension of time should be granted.

[9] Then the AD must decide if the appeal has a reasonable chance of success.

LAW AND ANALYSIS

[10] 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.

[11] 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."

[12] 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."

[13] 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?

[14] The Application was filed on January 20, 2016 but was incomplete. The GD decision was sent to the Applicant under cover of a letter dated December 14, 2015 and, according to the Application, was received by the Applicant on December 21, 2015.

[15] Thirty (30) days from December 21, 2015 is January 20, 2016. Therefore, the 30-day appeal period ended on January 20, 2016.

[16] The Tribunal's letter requesting missing information stated that if all of the missing information needed to complete the Application was received by February 25, 2016, then the Application would be treated as complete on January 20, 2016. The missing information was received on February 5, 2016.

[17] Therefore, the Application was treated as complete on January 20, 2016. As such, the Application was filed within the 30-day time limit.

[18] An extension of time is not required.

Leave to Appeal

[19] The Application states that the Applicant relies on erroneous findings of fact.

[20] The following summarizes the Applicant's submissions on the specific errors in the GD decision:

a) The GD decision states that the Applicant "enquired about medical benefits"; that statement is incorrect, as a Commission agent told him to get a doctor's note and apply for medical benefits, he did not inquire;

b) He did as he was advised and provided a note stating that six months of rest was required;

c) He was not advised that only fifteen weeks of benefits was the maximum;

d) The EI website stated that he could be entitled to another fifteen weeks and this was not a misleading message contrary to the GD decision;

e) It was confirmed by EI officers and stated on the website that he could receive an extra fifteen weeks of benefits; and

f) The GD decision did not let this happen, and it was wrong.

[21] The issue before the GD was whether the Applicant was paid the correct number of weeks for a prescribed illness pursuant to paragraph 12(3)(c) of the EI Act.

[22] The GD stated the correct legislative provisions and jurisprudence when considering the issue of sickness benefits.

[23] The GD noted that the Applicant testified at the GD hearing. The GD decision, at pages 3 to 4, summarized the evidence in the file, the testimony given at the hearing and the Applicant's submissions.

[24] The Applicant's submissions in support of the Application mostly re-argue the facts and arguments that he asserted before the GD. In particular, the GD noted:

a) at paragraph [12], that the Applicant noted that on his on-line reports there was a message stating "your fifteen weeks allotment is now over unless other arrangements had been made";

b) at paragraph [14], that he testified that there was a message on his account indicating that "I could be entitled to more benefits" if he provided further medical documentation and this message was then removed from his account on June 8, 2015;

c) at paragraph [15], that the Applicant submitted that he was not advised by the Commission of the 15 week maximum entitlement to sickness benefits and he

received mixed/confusing message in an automated post on his on-line account that stated he could be eligible for more benefits if he provided further medical documentation;

d) at paragraph [19], that he was lead to believe that he may be eligible for further sickness benefits given the message that was appearing on his on-line account and this, coupled with his expectation that he would receive sickness benefits until July 1, 2015, led to his aggravation and confusion.

[25] The Applicant's arguments summarized in subparagraphs [20] c), d) and e) above, repeat evidence and submissions made to the GD.

[26] 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.

[27] As for the arguments summarized in subparagraph [20] a) and b), above, paragraph [9] of the GD decision notes some of the evidence in the file and states that the Applicant "enquired about the requirements for sickness benefits" and paragraph [18] states that he "enquired about sickness benefits". The Applicant argues that he did not enquire, he was told to get a doctor's note and apply for medical benefits by an EI agent and he did that.

[28] 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.

[29] The GD decision is not based on whether the Applicant "enquired about sickness benefits" or whether he was told by the Commission about sickness benefits during communications with an EI agent without the Applicant first asking about sickness benefits. Therefore, the use of the word "enquire" in the GD decision is not an erroneous finding of fact which falls within the terms of paragraph 58(1)(c) of the DESD Act.

[30] It is not my role, as a Member of the Appeal Division of the Tribunal on an application for leave to appeal, to review and evaluate the evidence that was before the GD with a view to replacing the GD's findings of fact with my own. It is my role to determine whether the appeal has a reasonable chance of success on the basis of the Applicant's specified grounds and reasons for appeal: erroneous finding(s) of fact based on the evidence that was before the GD which finding of fact, pursuant to paragraph 58(1)(c) of the DESD Act, was made in a perverse or capricious manner or without regard for the material before it (emphasis mine).

[31] 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.

[32] The argument summarized in subparagraph [20] f), above, is that the GD Member was wrong to dismiss the Applicant's appeal.

[33] The Federal Court of Appeal, in *Brown v. Canada (AG)*, 2010 FCA 148, confirmed that paragraph 12(3)(c) of the EI Act allows for a maximum payment of 15 weeks of sickness benefits. The GD Member dismissed the Applicant's appeal on the basis that he can only receive a maximum of 15 weeks benefits during a given benefit period pursuant to paragraph 12(3)(c) of the EI Act. This conclusion was not wrong, it was correct.

[34] 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.

[35] I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[36] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division