



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Canada Employment Insurance Commission v. R. P.*, 2016 SSTADEI 187

Tribunal File Number: AD-15-1239

BETWEEN:

Canada Employment Insurance Commission

Applicant

and

R. P.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal

DECISION BY:: Shu-Tai Cheng

DATE OF DECISION: April 7, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Applicant applies to the Social Security Tribunal (Tribunal) for leave to appeal the decision of the General Division (GD) issued on November 3, 2015. The GD allowed the Respondent's appeal where the Commission had determined that the Respondent (or claimant) was not available for work pursuant to paragraph 18(a) the *Employment Insurance Act* (EI Act).

[2] The Respondent requested a reconsideration of the Commission's decision. The Commission maintained its original decision on the basis that the Respondent had not proven that she was available for work as she was outside of Canada from March 13, 2014 to May 13, 2014 and she had indicated that she was not available for work from February 13, 2014 to May 13, 2014. This resulted in an overpayment, her disentitlement and a penalty being imposed.

[3] The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on November 19, 2015. The Application was filed within the 30 day time limit.

[4] The grounds of appeal stated in the Application are that the GD erred in law as follows:

- a) In determining that the claimant was exempt from disentitlement while outside Canada to visit her ill mother;
- b) The finding of the GD was that the claimant had not proven her availability from February 13, 2015 to May 13, 2013;
- c) The GD allowed the appeal on the basis of subsection 55(1)(d) of the *Employment Insurance Regulations* (EI Regulations) incorrectly;
- d) Subsection 55(1)(d) of the EI Regulations allows for exemption from section 37 of the EI Act (disentitlement) only if the criteria of section 18 of the EI Act (availability) have been met; and

e) The claimant did not meet the criteria required for exemption.

ISSUE

[5] The Tribunal must decide whether the appeal has a reasonable chance of success.

LAW AND ANALYSIS

[6] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (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”.

[7] 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”.

[8] 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.

[9] The Tribunal needs to be satisfied that the reasons for appeal fall within any of the enumerated grounds of appeal. At least one of the reasons must have a reasonable chance of success, before leave can be granted.

Error of Law Asserted

[10] The Tribunal notes that the Respondent was present and was accompanied by her representative. She testified at the hearing before the GD. The Applicant did not to attend.

[11] The GD found, at pages 9 to 13 of its decision, that:

[24] The Member finds that the Appellant was outside of Canada for the period in question. Her absence from Canada does meet one of the exemptions of Regulation 55. The Regulation provides benefits for up to seven days for scenarios that include absences from Canada to visit an immediate family member who was seriously ill or injured. The Appellant was visiting her seriously ill mother.

[25] The Member finds the Appellant was correctly disentitled pursuant to section 37 of the Act for the period March 13, 2014 to May 13, 2014 during which she was outside Canada with the exception of the 7 days of benefits payable pursuant to Regulation 55(1)(d). The Appellant is to be paid benefits for a period of the first 7 days of her absence from Canada as she was outside of Canada to visit an immediate family member who was seriously ill.

Availability for Work

[26] On the issue of availability, a claimant is not entitled to be paid benefits for a working day for which she fails to prove that on that day she was capable of and available for work and unable to obtain suitable employment.

...

[29] The Appellant's evidence was that she was actively looking for work while collecting benefits but she was not serious about working from February 13, 2014 until she returned home from India on May 13, 2014.

[30] The Member finds that the Appellant did not demonstrate the desire to return to the labour market as soon as a suitable job was offered. The Appellant admitted that she could not have readily returned to Canada from India for work within 48 hours if work became available.

[31] The Member finds that the Appellant failed to demonstrate her desire to work through her efforts to find a suitable job. There is no evidence of a bona-fide job search by the Appellant from February 13, 2014, when she booked her flight, during the period while she was outside of Canada and throughout the period until she returned to Canada on May 13, 2014.

[32] The Member finds the Appellant was not available for work for the period February 13, 2014 to May 13, 2014.

[33] The Member finds the Commission correctly imposed a disentitlement from February 13, 2014 to May 13, 2014 pursuant to subsection 18(a) of the Act.

[44] The appeal is dismissed on all issues with modification.

[45] The Member finds the Appellant was correctly disentitled pursuant to section 37 of the Act for being out of Canada.

[46] The Member finds that the Appellant is to be paid 7 days of benefits as she was outside of Canada to visit an immediate family member who was seriously ill pursuant to Regulation 55(1)(d).

[47] The Member finds the Commission correctly imposed a disentitlement from February 13, 2014 to May 13, 2014 pursuant to subsection 18(a) of the Act for failing to prove she was available and looking for work.

[48] The Member finds the Appellant correctly accumulated a penalty for knowingly providing false or misleading information to the Commission.

[12] The GD concluded that the claimant was entitled to benefits for 7 days while she was outside of Canada to visit a seriously ill immediate family member despite failing to prove she was available and looking for work during this period.

[13] Paragraph 55(1)(d) of the EI Regulations states:

Subject to section 18 of the Act, a claimant who is not a self-employed person is not disentitled from receiving benefits for the reason that the claimant is outside Canada

...

(d) for a period of not more than seven consecutive days to visit a member of the claimant's immediate family who is seriously ill or injured;

[14] While the GD stated the legislative provisions relevant to the issues on appeal, the Applicant argues that the GD erred in law in that it found that the claimant failed to prove she was available and looking for work for the period February 13, 2014 to May 13, 2014 (paragraphs [25], [33] and [47] of the GD decision) but also determined that she is to be paid benefits for a period of the first 7 days of her absence from Canada, which were March 13, 2014 to March 19, 2014 (paragraph [25] of the GD decision).

[15] The GD does not appear to have taken into consideration the first part of paragraph 55(1)(d) of the EI Regulations which states "subject to section 18 of the Act". It determined

that the Respondent was disentitled pursuant to section 18 of the EI Act but also determined that she was eligible for benefits for 7 days. Therefore, the matter warrants review.

[16] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. Here, the Applicant has identified grounds and reasons for appeal which fall into the enumerated grounds of appeal, namely paragraph 58(1)(b) of the DESD Act.

[17] On the ground that there may be an error of law, I am satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[18] The Application is granted.

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

[20] I invite the parties to make written submissions on whether a hearing is appropriate and, if it is, the form of the hearing and, also, on the merits of the appeal.

Shu-Tai Cheng
Member, Appeal Division