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

Citation: *J. R. v. Canada Employment Insurance Commission,* 2016 SSTADEI 205

Tribunal File Number: AD-15-126

BETWEEN:

J. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: April 13, 2016

REASONS AND DECISION

INTRODUCTION

[1] On January 20, 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 denied benefits as the Commission determined that he had failed to prove just cause for voluntarily leaving his employment pursuant to sections 29 and 30 of the *Employment Insurance Act* (EI Act). The Appellant requested reconsideration. In August 2014, the Commission maintained its initial decision. The Applicant appealed to the GD of the Tribunal.

[2] The Applicant attended the GD hearing, which was held by teleconference on January 15, 2015. The Respondent did not attend.

[3] The GD determined that:

a) The Applicant quit his job voluntarily; he had submitted a letter of resignation and the employer accepted it;

b) The Applicant had reasonable alternatives that should have been exhausted prior to submitting the letter of resignation, such as asking for holiday leave or a leave of absence; and

c) The Applicant had not demonstrated "just" cause within the meaning of the EI Act.

[4] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on March 11, 2015. The Application stated that he received the GD decision on February 28, 2015.

ISSUES

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

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

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

LAW AND ANALYSIS

[8] 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.

[9] 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."

[10] 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."

[11] 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?

[12] The Application was filed on March 11, 2015. The GD decision was sent to the Applicant under cover of a letter dated February 9, 2015 and, according to the Application, was received by the Applicant on February 28, 2015. He was abroad until that date.

[13] Under paragraph 19(1)(a) of the *Social Security Tribunal Regulations*, I deem that the decision of the GD was communicated to the Applicant 10 days after the day on which it was

mailed to him on February 9, 2015. Accordingly, I find that the decision was communicated to the Applicant on February 19, 2015.

[14] Thirty (30) days from February 19, 2015 is March 21, 2015 which was a Saturday. Therefore, the 30-day period ended on March 23, 2015. The Application was filed on March 11, 2015. As such, the Application was filed within the 30-day time limit.

[15] An extension of time is not required.

Leave to Appeal

[16] The Application does not state upon what grounds of appeal the Applicant relies for this appeal. It includes a repetition of facts and submissions which the Applicant made before the GD and a handwritten annotation of the GD decision with questions and comments next to some paragraphs of the decision.

[17] As a result, the Tribunal requested additional information from the Applicant. The request described the required information as follows:

> **Information needed to complete the application**
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> To complete the application, the Tribunal needs the following information in writing:
>
> - **Reasons for the appeal:**
>
> Explain in detail **<u>why</u>** 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.

[18] The Applicant was given to January 4, 2016 to provide this information.

[19] On January 4, 2016, the Applicant replied, but did not provide the information requested. Rather, the Applicant asked questions pertaining to the the non-participation of his former employer in the hearing that took place before the GD on January 15, 2015.

[20] The Tribunal replied as follows:

> On September 8, 2014, the General Division – Employment Insurance Section of the Tribunal sent a letter to CVC Sling Shot Transportation Inc., asking them if they wish to be added as a party to the proceedings before the General Division. **You were copied on this letter**, and therefore advised that your former employer was given the opportunity to be added to the proceedings (see attached). As CVC Sling Shot Transportation Inc., did not request to be added, the hearing proceeded without its presence.
>
> On March 19, 2015, the Appeal Division of the Tribunal also sent a letter to CVC Sling Shot Transportation Inc., asking them if they wish to be added as a party to the proceedings before the Appeal Division. **You were also copied on this letter**, and therefore advised that your former employer was given the opportunity to be added to the proceedings (see attached). Please note that the Appeal Division did not receive a request from CVC Sling Shot Transportation Inc., to be added as a party to the proceedings before the Appeal Division.
>
> Additionally, please note that the Tribunal cannot force an employer to take part in a claimant's appeal.

> On December 2, 2015, the Tribunal Member of the Appeal Division assigned to your file requested missing information in order to complete your application for Leave to Appeal. You were given until January 4, 2016 to provide the missing information, together with any submissions. You have now until **February 12, 2016** to provide written submissions in response to our December 2, 2015, request or to confirm in writing that your letter of January 4, 2016 contains all your submissions.

[21] On February 2, 2016, the Applicant asked the Tribunal: "Can someone send a letter to my former employer … and call it a "Request for Missing Information", please?" The Applicant set out the text of a letter and asked "Do you kindly agree to send CVC such a request for missing information?"

[22] On March 9, 2016, the Tribunal replied and stated that it could not act on his request.

[23] The Applicant has not explained the reasons for his appeal other than what is included with the Application. His correspondence since filing the Application relates to challenging his former employer's non-attendance at the GD hearing and wanting the employer to explain its conduct.

[24] The GD decision stated the correct legislative provisions and applicable jurisprudence when considering the issue of voluntary leaving, at pages 3, 4, 8 and 9.

[25] The GD noted that the Applicant testified at the GD hearing. The GD decision, at pages 4 to 7, summarized the evidence in the file, the testimony given at the hearing and the Applicant's submissions.

[26] The Applicant's submissions in support of the Application re-argue the facts and arguments that he asserted before the GD.

[27] 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.

[28] 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.

[29] 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.

[30] 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.

[31] 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

[32] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division