



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. L. v. Canada Employment Insurance Commission*, 2016 SSTADEI 216

Tribunal File Number: AD-16-101

BETWEEN:

R. L.

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 19, 2016

REASONS AND DECISION

INTRODUCTION

[1] On November 24, 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 lost his employment due to misconduct pursuant to sections 29 and 30 of the *Employment Insurance Act* (EI Act). The Appellant requested reconsideration. In December 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 November 19, 2015. The Respondent did not attend.

[3] The GD determined that:

- a) The Applicant's statement to a co-worker was a threat;
- b) The Applicant had been warned about his behavior in the past and ought to have known that any continuance would result in dismissal; and
- c) His action in making a threat constituted misconduct within the meaning of the EI Act.

[4] The Applicant filed an incomplete application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on December 24, 2015. The Application stated that he received the GD decision on December 3, 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 December 24, 2015. The GD decision was sent to the Applicant under cover of a letter dated November 16, 2015 and, according to the Application, was received by the Applicant on December 3, 2015.

[13] The Tribunal asked the Applicant, by letter dated January 26, 2016, to complete his Application by providing 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:

As mentioned above you must first request the permission of the Appeal Division to file an appeal. In addition to identifying the reasons for your appeal, you must also explain why your application to the Appeal Division has a reasonable chance of success.

Any statements of fact that were presented to the General Division and that you are relying on in this Application.

[14] The Applicant was given to February 26, 2016 to provide this information. The Tribunal stated that if all the missing information was received by this date, his application would be treated as having been received on December 24, 2015.

[15] On February 23, 2016, the Applicant replied and stated that his ground of appeal was that the GD had based its decision on erroneous findings of fact.

[16] An application for leave to appeal must be made to the AD within 30 days after the day on which the decision appealed from was communicated to the appellant.

[17] Thirty (30) days from December 3, 2015 is January 2, 2016 which was a Saturday. Therefore, the 30-day period ended on January 4, 2016. The Application was filed on December 24, 2015. 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 Applicant bases his appeal on erroneous findings of fact. He states that the GD Member was “impartial” [sic] and “did not care what I said and made a decision based on what he read”. In particular, he disputes the GD’s findings that he made a threat and that he denied receiving or signing any warnings from his employer. In addition, the Applicant made handwritten annotations of the GD decision with comments next to some paragraphs of the decision.

[20] The GD decision stated the correct legislative provisions and applicable jurisprudence when considering the issue of voluntary leaving, at pages 2, 3, 5 and 6.

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

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

[23] 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.

[24] 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.

[25] 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.

[26] 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.

[27] 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

[28] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division