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

Citation: *A. P. v. Canada Employment Insurance Commission,* 2016 SSTADEI 217

Tribunal File Number: AD-16-362

BETWEEN:

A. P.

Appellant

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 January 26, 2016, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal from a refusal by the Canada Employment Insurance Commission (Commission) to antedate the Applicant's application for employment insurance (EI) benefits. The Applicant sought reconsideration of the Commission's decision, and the Commission maintained its decision by letter dated September 22, 2015.

[2] The Applicant appealed to the GD on October 15, 2015.

[3] A teleconference hearing was held by the GD on January 21, 2016. The GD rendered its decision on January 26, 2016, and the decision was sent to the Applicant under cover of letter dated January 26, 2016.

[4] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on February 25, 2016. It states that the GD decision was received by the Applicant on January 29, 2016. The Application was filed within the 30 day limit.

ISSUE

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

SUBMISSIONS

[6] The Applicant submitted in support of the Application that GD based its decision on erroneous findings of fact. In particular, the Applicant argued that:

a) The GD found that he did not inquire about his rights and responsibilities before June 2014 and based its decision on this finding (paragraphs [12], [15], [18] and [23] of the GD decision);

b) He has maintained that he did attend at a Service Canada office to inquire about his rights before June 2014 and was told that he could not file an EI claim until he received his record of employment (ROE), and this information is in the documents on file; and

c) The GD Member stated during the teleconference hearing that it was fairly common for Service Canada offices to provide this incorrect information, specifically that a ROE is needed to file an EI claim.

LAW AND ANALYSIS

[7] Subsection 52(1) of *Department of Employment and Social Development* (DESD) *Act* states that an appeal of a decision made under the *Employment Insurance Act* must be brought to the General Division of the Tribunal within 30 days after the day the decision is communicated to the Appellant.

[8] 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".

[9] 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".

[10] 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.

[11] The Applicant did not attend the GD hearing but his representative did. The Respondent did not attend the hearing but did file written submissions.

[12] The issue before the GD was whether the Respondent's denial of the Applicant's antedate request should be upheld.

[13] The GD decision found that the Applicant did not inquire about his rights and responsibilities before June 2014. The Applicant argues that he did make inquiries at Service Canada in Richmond Hill before June 2014 and that this information was in the file before the Tribunal. However, the GD decision notes that the Applicant's representative confirmed that the Applicant did not previously consult with a Service Canada representative during the entire time to enquire about his rights and responsibilities regarding his claim for benefits.

[14] 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.

[15] The GD decision was based on the finding that the Applicant did not enquire about his rights and responsibilities regarding benefits prior to June 2014.

[16] I have listened to the audio recording of the GD hearing. Early on in the hearing, the Applicant's representative refers to the Applicant having spoken to Service Canada and being told that, to submit a claim, he needed his ROE. It is not clear from this statement what the time frame of this communication with Service Canada was (i.e. whether it was prior to June 2014 or not). Then at about 25 minutes into the hearing, the Applicant's representative stated that after she called the employer in June 2014, the Applicant "returned to Service Canada". Also, I did <u>not</u> hear, in the audio recording, the Applicant's representative confirm that "the Applicant did not previously consult with a Service Canada representative during the entire time to enquire about his rights and responsibilities regarding his claim for benefits."

[17] The GD's finding at paragraph [15] of its decision that the Applicant's representative confirmed that the Applicant did not previously enquire about his rights and

responsibilities regarding his claim for benefits seems contrary to the representative's statement that, in June 2014, he "returned to Service Canada".

[18] The GD's summary of the evidence in the file that the Applicant "advised that he had not previously [before June 2014] contacted Service Canada to enquire about his rights and responsibilities". This is contrary to the Applicant's assertion that he has maintained and there is evidence in the documents that he did enquire about his rights before June 2014 and was told that he needed his ROE in order to file a claim.

[19] The GD decision is based on the finding that the Applicant did not inquire about his rights and responsibilities before June 2014. In arriving at this finding, the GD found that the Applicant advised of this and the Applicant's representative confirmed this fact. However, this appears to be incorrect based on the record of appeal.

[20] As for the Applicant's argument that the GD Member stated during the teleconference hearing that it was fairly common that Service Canada offices provide incorrect information, that a ROE is needed to file a claim, I reviewed the audio recording to determine the nature of the GD Member's statement. In the audio recording, the GD Member is heard to state "it could be a misunderstanding, it happens often". The "misunderstanding" referred to is a misunderstanding that a ROE is needed at the time of filing an application/claim for benefits. The GD Member did not state that it was common for Service Canada to provide incorrect information. In the context of the topic at that moment of the hearing, it may be possible to interpret what was said as confirming that Service Canada commonly provides incorrect information on this issue.
However, my interpretation of the statement was that it is a common misunderstanding that a ROE is needed at the time of filing a claim for benefits. The GD Member goes on to explain that this is not the case.

[21] 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, specifically under subparagraphs 58(1) (c) of the DESD Act, as described in paragraphs [15] to [19] above.

[22] On the ground that the GD may have 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, I am satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[23] The Application is granted.

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

[25] 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