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

Citation: *C. L. v. Canada Employment Insurance Commission,* 2016 SSTADEI 213

Tribunal File Number: AD-16-339

BETWEEN:

C. 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 16, 2016

REASONS AND DECISION

INTRODUCTION

[1] On January 18, 2016, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal from a reconsideration decision of the Canada Employment Insurance Commission (Commission). The Commission had allocated monies received by the Applicant pursuant to sections 35 and 36 of the *Employment Insurance Regulations* (EI Regulations). The Applicant sought reconsideration of the Commission's decision, and the Commission maintained its decision by letter dated August 18, 2015.

[2] A teleconference hearing was held by the GD on January 15, 2016. The GD rendered its decision on January 18, 2016, and the decision was sent to the Applicant under cover of letter dated January 19, 2016.

[3] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on February 19, 2016. It states that the GD decision was received by the Applicant on January 26, 2016. The Application was filed within the 30 day limit.

ISSUE

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

SUBMISSIONS

[5] The Applicant submitted in support of the Application that GD failed to observe a principal of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, erred in law and based its decision on erroneous findings of fact. In particular, the Applicant argued that the GD:

a) Made erroneous findings of fact at paragraphs [18] and [27] of its decision;

b) Attributed submissions and evidence to him that he did not make or give, at paragraphs [13] and [29]; and

c) Made errors of law by allocating severance monies pursuant to subsection 36(9) of the EI Regulations, misconstruing CUB jurisprudence, attributing reliance on jurisprudence to him when that was not the case and misapplying Federal Court of Appeal cases.

LAW AND ANALYSIS

[6] 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.

[7] 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".

[8] 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".

[9] 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.

[10] The Applicant attended the GD hearing. The Respondent did not attend the hearing but did file written submissions.

[11] The issue before the GD was allocation of vacation pay that was paid to the Applicant after separation from employment.

[12] The GD decision attributed submissions to the Applicant at paragraphs [13], [29], [38] and [40]. The Applicant argues that he did not make a number of those submissions and that the finding of the GD member was wrong.

[13] The Applicant also argues that the GD misapplied Federal Court of Appeal and CUB jurisprudence.

[14] 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)(b) and (c) of the DESD Act.

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

CONCLUSION

[16] The Application is granted.

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

[18] 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