



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. B. v. Canada Employment Insurance Commission*, 2016 SSTADEI 245

Tribunal File Number: AD-16-399

BETWEEN:

S. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: May 3, 2016

REASONS AND DECISION

INTRODUCTION

[1] On February 5, 2016, 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 an extension of time within which to seek reconsideration by the Commission. The Applicant appealed to the GD of the Tribunal.

[2] The Applicant attended the GD hearing, which was held by teleconference on February 4, 2016. The Respondent did not attend.

[3] The GD determined that:

- a) The Commission exercised its discretion under section 112 of the *Employment Insurance Act* (EI Act) in a judicial manner when it denied the Appellant's request to extend the 30 day reconsideration period;
- b) The Commission considered all pertinent factors including the Applicant's reasons for delay;
- c) The Applicant did not demonstrate a continuing intention to request the reconsideration; there was no evidence of a reasonable explanation for requesting a longer period for reconsideration; and the Applicant did not demonstrate a continued intention to request reconsideration; and
- d) The Applicant's delay in requesting reconsideration does not meet the requirements of the *Reconsideration Request Regulations*.

Based on these conclusions, the GD dismissed the appeal.

[4] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on March 6, 2016. The Application stated that he received the GD decision on February 20, 2016. The Application was filed within the 30 day time limit.

ISSUE

[5] Whether the appeal has a reasonable chance of success.

LAW AND ANALYSIS

[6] 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.

[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’s grounds of appeal are that “natural justice was ignored” in that the GD did not use its authority to waive the 30 day period for an EI claimant to request reconsideration and that the GD based its decision on erroneous findings of fact. His arguments are based on his assertion that he did not receive the Commission’s letter of June 2013 or any other formal notification of the original violation; and that is the reason he was late requesting reconsideration.

[11] The GD decision stated the correct legislative provisions and applicable jurisprudence when considering the issue of antedate pursuant to section 112 of EI Act and the *Reconsideration Request Regulations*, at pages 3, 4 and 8.

[12] The GD noted that the Applicant attended the GD hearing and testified. The GD decision, at pages 5 and 6, summarized the evidence in the file, the testimony given at the hearing and the Applicant's submissions.

[13] The GD noted that the Applicant asserted that he did not receive the Commission's letter of June 2013 or any other formal notification of the original violation and that is the reason he was late requesting reconsideration, on pages 5, 6 and 8 of its decision.

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

[15] 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.

[16] 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.

[17] As for the Applicant's submissions that the GD Member did not give appropriate consideration to his circumstances and made a decision based only on the Commission's statements, the Applicant appears to be suggesting that the GD failed to observe a principle of natural justice in that his hearing was unfair.

[18] The Applicant's allegation that the GD ignored natural justice is based on the GD not having waived the 30 day period within which to file his reconsideration request. He argues that the GD had the authority to recognize that he had a valid reason for his delay, did not do this, and did not address the substantive issues which were the penalties imposed on him.

[19] The GD decision correctly referred to Federal Court of Appeal case law that has held that unless the Commission failed to exercise its discretion in a non-judicial way, the reviewing body (here the GD of the Tribunal) cannot substitute its own discretion for that of the Commission.

[20] The GD found that the Commission exercised its discretion in a judicial manner when it denied the Applicant's request to extend the 30 day reconsideration period. As such, the GD could not substitute its own discretion for that of the Commission. Therefore, the GD dismissed the Applicant's appeal.

[21] The GD did not refuse to exercise its jurisdiction in so doing. Nevertheless, the Applicant "believe[s] natural justice was ignored".

[22] An appellant has the right to expect a fair hearing with a full opportunity to present his or her case before an impartial decision-maker: *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at paras 21-22.

[23] I have reviewed the appeal file in detail, and it is clear that the GD had the documentary file (which included the Applicant's application and other documents related to the review conducted by the Commission). The GD also summarized, in its written decision, the Appellant's testimony about the history of the proceedings and the challenges which resulted.

[24] In *Arthur v. Canada (A.G.)*, 2001 FCA 223, the Federal Court of Appeal stated that an allegation of prejudice or bias of a tribunal is a serious allegation. It cannot rest on mere suspicion, pure conjecture, insinuations or mere impressions of the applicant. It must be supported by material evidence demonstrating conduct that derogates from the standard.

[25] I have considered the allegations in the Application and the record of the appeal, and I conclude that the material in them does not demonstrate conduct by the GD that derogates from the standard.

[26] 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.

[27] 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.

[28] 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

[29] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division