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

[TRANSLATION]

Citation: *H. G. v. Canada Employment Insurance Commission,* 2016 SSTADEI 240

Tribunal File Number: AD-15-895

BETWEEN:

H. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division – Appeal Decision

DECISION BY: Pierre Lafontaine

HEARD ON April 26, 2016

DATE OF DECISION: April 28, 2016

Canada

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On July 15, 2015, the Tribunal's General Division found that:

> - the Appellant had not accumulated a sufficient number of hours of insurable employment to qualify for employment insurance benefits under section 7 of the *Employment Insurance Ac*t ("the *Act*").

[3] The Appellant filed an application for leave to appeal to the Appeal Division on August 6, 2015. Leave to appeal was granted on September 17, 2015.

FORM OF HEARING

[4] The Tribunal determined that this appeal hearing would proceed by teleconference for the following reasons:

- the complexity of the issue or issues;
- the fact that the parties' credibility was not one of the main issues;
- the cost-effectiveness and expediency of the hearing choice;
- the need to proceed as informally and quickly as possible while complying with the rules of natural justice.

[5] During the hearing, the Appellant was present and the Respondent was represented by Manon Richardson.

THE LAW

[6] In accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

(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 or order, whether or not the error appears on the face of the record; or

(c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

ISSUE

[7] The General Division of the Tribunal erred when it found that the Appellant had not accumulated a sufficient number of hours of insurable employment to qualify for employment insurance benefits under section 7 of the *Act*.

ARGUMENT

[8] The Appellant's arguments in support of her appeal are as follows:

- She has the number of hours required to qualify for employment insurance benefits;

- She received payment for thirty insurable hours from her employer in May 2014 for work performed in 2013;

- She disputes the rate of unemployment applied by the Respondent, and argues that she accumulated sufficient hours (603 hours) even without the payment made received May 2014 considering that she was required to accumulate 595 hours.

[9] The Respondent's arguments against the Appellant's appeal are as follows:

- The Appellant accumulated 603 hours of employment in her qualifying period from January 20, 2013 to January 18, 2014. She established a claim for sickness benefits on January 19, 2014 and received fifteen (15) weeks of sickness benefits from February 2, 2014 to May 17, 2014;

- When her claim for benefit was established on January 21, 2014, the unemployment rate was 7.7% and she needed 630 hours to qualify for regular benefits;

- To establish a new claim at the new rate, she had to have accumulated enough insurable hours for a new claim since she had received sickness benefits;

- The Appellant cannot include the 29.98 hours of her pay in lieu of notice given that they are not insurable hours of employment, not salary and not hours of paid leave (vacation scheduled during the employment period) but an amount of money paid after her separation from employment as pay in lieu of notice. The amount is insurable in monetary terms, but no insurable hours are counted since she did not work and was no longer employed.

- The Canada Revenue Agency (CRA) has sole authority pursuant to paragraph 90(1)d) of the *Act* to make decisions concerning the number of insurable hours of employment.

STANDARDS OF REVIEW

[10] The parties made no submissions concerning the applicable standard of review.

[11] The Tribunal notes that the Federal Court of Appeal in *Canada (AG) v. Jean*, 2015 FCA 242, mentions at paragraph 19 of its decision that when the Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court.

[12] The Federal Court of Appeal went on to underscore that not only does the Appeal Division have as much expertise as the General Division of the Social Security Tribunal and thus is not required to show deference, but an administrative appeal tribunal also cannot exercise the review and superintending powers reserved for higher provincial courts or, in the case of "federal boards," for the Federal Court and the Federal Court of Appeal.

[13] The Federal Court of Appeal closed by underscoring that where it hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it solely by sections 55 to 69 of that *Act*.

[14] The mandate of the Appeal Division of the Social Security Tribunal described in *Jean* was later affirmed by the Federal Court of Appeal in *Maunder v. Canada (AG)*, 2015 FCA 274.

ANALYSIS

[15] The Appellant argues that she received payment for thirty insurable hours from her Employer in May 2014 for work performed in 2013, which would give her the number of hours required.

[16] The Tribunal underscored that it has no authority to determine whether or not an employment is insurable or whether or not the hours associated with an employment are insurable. Such authority resides with the CRA, and subsequently with the Tax Court of Canada (TCC).

[17] Paragraph 90(l)d) of the *Act* clearly states that only an officer of the CRA authorized by the Minister can make a ruling on how many hours an insured person has had in insurable employment.

[18] In fact, the CRA ruled in this case on October 22, 2015 that the pay in lieu of notice received by the Appellant did not provide her with any insurable hours. The Appellant did not appeal this decision and it is therefore final.

[19] The evidence before the General Division shows that the Appellant accumulated 603 hours of employment during her qualifying period from January 20, 2013 to January 18, 2014. She established a claim for sickness benefits on January 19, 2014 and received fifteen (15) weeks of sickness benefits from February 2, 2014 to May 17, 2014.

[20] When her first claim was established on January 21, 2014, the unemployment rate was 7.7% and she needed 630 hours to qualify for regular benefits. The claim was established for one (1) year.

[21] Although the Appellant is claiming regular benefits following her sickness benefits, she cannot change her claim for benefits in relation to the new unemployment rate in effect a few months later, since the claim had already been established and benefits had already been paid under this claim from January 2014, the Appellant having accumulated no insurable hours between January 2014 and August 2014.

[22] Although the Tribunal is sympathetic to the Appellant, the *Act* does not allow any discrepancy and gives the Tribunal no discretion to remedy the defect (*Lévesque,* A-196-01).

[23] Consequently, the evidence presented by the Appellant does not support the grounds for appeal argued, nor any other possible ground for appeal. The General Division's decision is based on the material before it and is consistent with legislative provisions and case law.

CONCLUSION

[24] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division