



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. H. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 59

Tribunal File Number: GE-16-605

BETWEEN:

L. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Takis Pappas

DATE OF DECISION: April 29, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Appellant filed an initial claim for Employment Insurance maternity/parental benefits on November 16, 2015. The Respondent determined that the Appellant accumulated 553 hours of insurable employment between November 16, 2014 and November 14, 2015 and she needed 600 hours of insurable employment to qualify for benefits. Therefore, she failed to demonstrate that she met the requirements to receive benefits, according to section 93 of the *Employment Insurance Regulations* (the Regulations).

[2] The Appellant requested a reconsideration of the Respondent's decision on November 30, 2015. On January 8, 2016, the Respondent informed the Appellant that it was maintaining the initial decision.

[3] The Tribunal notified the Appellant of its intention to summarily dismiss her appeal for the reasons set out in the letter dated March 29, 2016. The Tribunal invited the Appellant to send her submissions in writing by April 28, 2016, if she felt that her appeal had a reasonable chance of success and should not be summarily dismissed. As of today's date, the Tribunal did not receive any submissions from the Appellant.

ISSUE

[4] The Tribunal must decide whether the appeal should be summarily dismissed.

THE LAW

[5] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[6] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[7] Section 93 of the Regulations provides that:

(1) An insured person who does not qualify to receive benefits under section 7 of the Act and who is claiming special benefits qualifies to receive the special benefits if the person

(a) has had an interruption of earnings from employment; and

(b) has had 600 or more hours of insurable employment in their qualifying period.

EVIDENCE

[8] The Appellant filed an initial claim for Employment Insurance benefits on November 16, 2015.

[9] The Respondent determined that the Appellant accumulated 553 hours of insurable employment between November 16, 2014 and November 14, 2015 and she needed 600 hours of insurable employment to qualify for benefits. Therefore, she failed to demonstrate that she met the requirements to receive benefits, according to section 93 of the Regulations.

[10] The Appellant requested a reconsideration of the Respondent's decision on November 30, 2015. On January 8, 2016, the Respondent informed the Appellant that it was maintaining the initial decision.

[11] On February 12, 2016, the Tribunal received a Notice of Appeal from the Appellant. She was appealing the Respondent's finding that she did not have sufficient hours of insured employment to qualify for Employment Insurance maternity/parental benefits.

[12] The Tribunal then informed the Appellant of its intention to summarily dismiss the appeal for the reasons set out in the letter of intent dated March 29, 2016. The Tribunal invited the Appellant to send her submissions in writing by April 28, 2016, if she felt her appeal had a reasonable chance of success and should not be summarily dismissed.

[13] The Tribunal did not receive additional information from the Appellant within the requested time period, April 28, 2016.

SUBMISSIONS

[14] The Appellant submitted that:

- a) She gave birth a week early which left her 47 hours short of the 600 required. She returned early from her last maternity leave in order to work the required 600 hours. Due to complications she did not get the 600 hours required. She has worked hard and paid into EI for 10+ years and money is tight with two children under two. She would like her claim to be reconsidered as her situation and history is unique and is only a few hours short of the 600 she requires.

[15] The Respondent submitted that:

- a) Subsection 93(1) of the Regulations stipulates that a claimant can be entitled to receive special benefits provided that she
 - (a) has had an interruption of earnings, and
 - (b) has accumulated 600 or more insured hours in the qualifying period, even if she does not qualify for regular benefits
- b) The Appellant's qualifying period was determined to be from November 16, 2014 to November 14, 2015. According to section 93 of the Regulations, the minimum requirement for the Appellant to qualify to receive Employment Insurance maternity/parental benefits is 600 hours. The Appellant accumulated 553 hours of insurable employment in her qualifying period.

ANALYSIS

[16] The Tribunal must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success according to subsection 53(1) of the *Department of Human Resources and Skills Development Act*.

[17] Before summarily dismissing an appeal, did the General Division of the Social Security Tribunal give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions?

[18] The Tribunal notified the Appellant of its intention to summarily dismiss her appeal under section 22 of the *Social Security Tribunal Regulations*, for the reasons set out in the letter dated March 29, 2016. The Tribunal invited the Appellant to send her submissions in writing by April 28, 2016, if she felt that her appeal had a reasonable chance of success and should not be summarily dismissed. The Tribunal did not receive any submissions from the Appellant.

[19] Is the General Division of the Social Security Tribunal satisfied that this appeal has no reasonable chance of success? According to subsection 53(1) an appeal must be summarily dismissed if it displays no reasonable chance of success.

[20] The Tribunal finds that the Respondent, in their submissions, clearly identified the reason why the Appellant is entitled to Employment Insurance benefits and the relevant legislation that applies in this case.

[21] The Appellant filed a claim for Employment Insurance benefits effective November 16, 2015.

[22] The Appellant accumulated 553 hours of insurable employment between November 16, 2014 to November 14, 2015 and she needed 600 hours of insurable employment to qualify for maternity/parental benefits.

[23] The Appellant submitted that she has worked hard and paid into EI for 10+ years and money is tight with two children under two. She would like her claim to be reconsidered as her situation and history is unique and is only a few hours short of the 600 she requires.

[24] Unfortunately, the Respondent and the Tribunal have no power to amend the law and allow benefits outside the parameters of the Act.

[25] The Federal Court of Appeal re-affirmed the principle that adjudicators are not permitted to re-write legislation or interpret it in a manner that is contrary to its plain meaning. *Canada (AG) v. Kneé*, 2011 FCA 301.

[26] Furthermore, in the Federal Court of Appeal in *Granger* (A-684-85), Justice Pratte J.A. stated: “It is beyond question that the Commission and its representatives have no power to amend the Act, and that therefore the interpretation which they may make of the Act does not by itself have the force of law.”

[27] For all the above reasons, the Tribunal finds that the Appellant’s appeal has no reasonable chance of success.

CONCLUSION

[28] Since the Tribunal found that the appeal has no reasonable chance of success, the appeal is summarily dismissed.

Takis Pappas
Member, General Division - Employment Insurance Section