



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. C. v. Canada Employment Insurance Commission*, 2016 SSTADEI 243

Tribunal File Number: AD-15-370

BETWEEN:

N. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY:: Shu-Tai Cheng

DATE OF DECISION: May 1, 2016

REASONS AND DECISION

INTRODUCTION

[1] On June 3, 2015, 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 imposed disentitlements on the Applicant pursuant to sections 18 and 50 of the *Employment Insurance Act* for failing to prove her availability for work and for failing to actively seek employment. The Applicant sought reconsideration of the Commission's decision, and the Commission maintained its decision by letter dated March 10, 2015.

[2] The Applicant appealed to the GD of the Tribunal in March 2015.

[3] A teleconference hearing was held by the GD on May 22, 2015. The GD rendered its decision on June 3, 2015, and the decision was sent to the Applicant under cover of letter dated June 3, 2015.

[4] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on June 18, 2015. It states that the GD decision was received by the Applicant on June 8, 2015. 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 rendered a decision without having all the evidence before it. In particular, the Applicant argued that:

- a) The GD agreed to the Applicant sending documents to the Tribunal after the hearing (supporting her assertions that she was seeking employment in November 2014);

- b) The GD did not give a deadline by which time the documents needed to be submitted;
- c) The documents were not available until June 4, 2015, and she faxed them to the Tribunal as soon as they were available;
- d) The GD decision stated that she had committed to send the documents by May 29, 2015, but this was not the case; and
- e) The GD rendered a decision without all of her evidence before it.

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 attended the GD hearing. The Respondent did not attend the hearing but did file written submissions.

[12] The issues before the GD were the Applicant's availability for work and whether she was actively seeking employment.

[13] The GD decision stated at paragraph [23] that the Applicant "would submit additional documentation by facsimile to prove that she was seeking employment commencing November 2014" and at paragraph [24] that the Applicant "committed to send by facsimile no later than May 29, 2015" and "No additional submissions were received by the Tribunal."

[14] As such, the document that the Applicant sent to the Tribunal on June 4, 2015 was not seen by the GD Member prior to a decision being rendered. It appears that the Applicant's file before the GD was closed by the time she called the Tribunal on June 5, 2015 to ask for confirmation that the document had been received.

[15] The Applicant argues that she was not given a deadline when the additional evidence (document) was discussed during the hearing and had she known that a deadline had been set, she would have contacted the Tribunal to request more time when the document she needed from a third party was not readily available.

[16] Unfortunately, there is no audio recording of the GD hearing in the appeal record. Therefore, it is not possible to confirm whether a firm deadline for submission of the document was communicated to the Applicant at the hearing or not.

[17] Although the Applicant did not refer to the words of subsection 58(1) of the DESD Act, her reasons for appeal suggest a breach of natural justice in that she did not have an opportunity to present her case fully. In addition, while the non-availability of an audio recording from the GD hearing, in and of itself, is not a ground for setting aside a GD decision, whether the absence of an audio recording of the GD hearing, in this matter, effectively denies the Applicant her right of appeal before the AD warrants review.

[18] 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 subparagraph 58(1)(a) of the DESD Act.

[19] On the ground that there may be a breach of natural justice, I am satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[20] The Application is granted.

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

[22] 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