



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

[TRANSLATION]

Citation: *A. N. v. Canada Employment Insurance Commission*, 2016 SSTADEI 249

Tribunal File Number: AD-16-420

BETWEEN:

A. N.

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 5, 2016

REASONS AND DECISION

DECISION

[1] The Social Security Tribunal of Canada (Tribunal) refuses leave to appeal before the Appeal Division.

INTRODUCTION

[2] On October 8, 2016, the General Division of the Tribunal (SST-GD) dismissed the Applicant's appeal.

[3] In May 2015, the Canada Employment Insurance Commission (Commission) found that the Applicant was not eligible to receive Employment Insurance benefits as of March 18, 2015, due to her misconduct.

[4] On June 25, 2015, the Commission denied the Applicant's request for reconsideration. On July 7, 2015, the Applicant appealed this decision to the SST-GD.

[5] On December 17, 2015, the SST-GD held a videoconference hearing and on February 8, 2016, it rendered a decision.

[6] The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on March 9, 2016.

ISSUES

[7] Was the Application filed within the prescribed time?

[8] Does the appeal have a reasonable chance of success?

THE LAW AND ANALYSIS

Application Date of Submission

[9] Paragraph 57(2)(a) of the *Department of Employment and Social Development Act* provides that an application for leave to appeal must be filed within 30 days after the day on which the decision is communicated to the appellant.

[10] The SST-GD decision was sent to the Applicant under cover of a letter dated February 8, 2016. The Application states that the Applicant received the decision on February 23, 2016.

[11] The Application was submitted on March 9, 2016, 15 days after February 23, 2016. It was submitted within the prescribed time frame.

Leave to Appeal

[12] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act*, “[a]n 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”.

[13] Subsection 58(2) of the *Department of Employment and Social Development Act* states that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

[14] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

- (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.

[15] The Tribunal will grant leave to appeal if it is satisfied that the Applicant demonstrates that one of the aforementioned grounds of appeal has a reasonable chance of success.

[16] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction, or relating to a principle of natural justice, the response to which might justify setting aside the decision under review.

[17] In her Application, the Applicant states that:

- (a) 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;
- (b) She provided sufficient evidence to justify her extended absence, but the SST-GD overlooked it when it made its decision;
- (c) The decision rendered contravenes the *Employment Insurance Act* (Act) criteria for misconduct; and
- (d) She disagrees with several paragraphs of the SST-GD's decision.

[18] Since a leave to appeal proceeding is a preliminary step to a hearing on the merits (in the event that a hearing is necessary), the parties do not have to prove their case. The Tribunal will grant leave to appeal if it is satisfied that one of the grounds of appeal has a reasonable chance of success.

[19] The Appeal Division read and analysed the 40 pages of the Application. However, it is not up to the Appeal Division member to determine whether to grant leave to appeal to re-examine and reassess the evidence submitted before the General Division. Based on my

reading of the file and on the SST-GD's decision, the reasons the Applicant presented in her Application (namely, that she has provided sufficient evidence to justify her absence) have already been brought before the General Division.

[20] Mere repetition of the arguments already made before the General Division is not sufficient to show that one of the above grounds of appeal has a reasonable chance of success.

[21] An appeal is not a new hearing on the merits of the Applicant's claim for Employment Insurance benefits.

[22] As regards the Applicant's submission that the SST-GD's decision contravenes the criteria set out in the Act, the Applicant is relying on information she found online. On this general information, the Applicant is basing her claim that the SST-GD did not apply the misconduct criteria to her situation.

[23] The SST-GD's decision refers to the applicable sections of the EI Act and misconduct case law. The SST-GD applied the law to the Applicant's situation. The decision does not contain an error in law.

[24] Since the Applicant is not raising any of the grounds of appeal set out in subsection 58(1) of the *Department of Employment and Social Development Act*, the appeal has no reasonable chance of success.

CONCLUSION

[25] The application for leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division