



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. B. v. Canada Employment Insurance Commission*, 2016 SSTADEI 250

Tribunal File Number: AD-16-312

BETWEEN:

D. 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 6, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On January 13, 2016, the General Division of the Tribunal (SST-GD) dismissed the Applicant's appeal.

[3] In April 2013, the Canada Employment Insurance Commission (Commission) found that the Applicant was not eligible for Employment Insurance benefits as of April 3, 2011, due to the time elapsed between the end of his employment and the submission of his claim.

[4] On May 8, 2013, the Commission denied the Applicant's request for reconsideration. In May 2013, the Applicant appealed this decision to the SST-GD; however, the SST-GD summarily dismissed the appeal in October 2013. On November 1, 2013, the Applicant appealed to the Tribunal's Appeal Division. On May 11, 2015, the Tribunal's Appeal Division allowed the appeal and referred the matter back to the SST-GD for reconsideration in accordance with the reasons stated in its decision.

[5] On November 4, 2015, an SST-GD reconsideration hearing was held via teleconference. The SST-GD rendered its decision on January 13, 2016. The SST-GD found that the Applicant's claim for Employment Insurance benefits could not be antedated to April 3, 2011, because the Applicant did not meet the conditions set out in subsection 10(4) of the *Employment Insurance Act* (Act) regarding the antedate.

[6] On February 11, 2016, the Applicant filed an application for leave to appeal (Application) to the Appeal Division, within the prescribed timeframe.

ISSUE

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

THE LAW AND ANALYSIS

[8] 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”.

[9] 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”.

[10] 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.

[11] 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.

[12] 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.

[13] In his Application, the Applicant states that:

- (a) The SST-GD based its decision on an erroneous finding of facts that it made in a perverse or capricious manner or without regard for the material before it.

(b) In paragraphs 13(b) and 20 of the decision, the SST-GD member stated the following:

[*translation*]

The Commission would have possibly accepted that he file a claim at the end of his wage compensation...

(c) The decision is based on an assumption ("would have possibly").

[14] 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.

[15] Paragraph 13(b) of the SST-GD's decision is not a finding of fact. Rather, it is a summary of the Commission's observations.

[16] The SST-GD found that the Applicant was laid off on March 31, 2011, that he reached the end of his wage compensation in May 2012, and that he filed a claim for Employment Insurance benefits on November 18, 2012.

[17] In paragraph 20, the SST-GD took into consideration that [*translation*] "the Commission states that it would have possibly accepted a claim from the Claimant submitted once his wage compensation ended", and found that [*translation*] "however, given that the Claimant was completing his studies at the time, he waited an additional seven months before filing his claim for benefits."

[18] The SST-GD's consideration was not made in a perverse or capricious manner or without regard for the material before it. In its submission, the Commission had stated that [*translation*] "The Commission would have possibly accepted that he file a claim at the end of his wage compensation."

[19] In fact, by taking into consideration this observation of the Commission's, the SST-GD was implying that the Applicant had good cause for his delay up until the end of his wage compensation. In paragraph 25, it found that the Applicant did not present a just cause for the

entire period of his delay in filing his Employment Insurance claim, that is, from the end of his wage compensation up until he filed his claim.

[20] I find that the SST-GD did not base 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.

[21] 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

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

Shu-Tai Cheng
Member, Appeal Division