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

Citation: *A. Q. v. Canada Employment Insurance Commission,* 2016 SSTADEI 281

Tribunal File Number: AD-16-463

BETWEEN:

A. Q.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY:: Mark Borer

DATE OF DECISION: May 27, 2016

DECISION

[1] On February 24, 2016, a member of the General Division dismissed the Applicant's appeal from the previous determination of the Commission. In due course, the Applicant filed an application requesting leave to appeal to the Appeal Division.

[2] Subsection 58(1) of the *Department of Employment and Social Development Act* states that 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, 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.

[3] The Act also states that leave to appeal is to be refused if the appeal has "no reasonable chance of success."

[4] In his initial application the Applicant made many arguments which should have been made to the General Division member. He also submitted that he missed his General Division hearing because he "forgot the day and time of the hearing", and asked that he be "let off payment" of his overpayment.

[5] Noting that the Applicant's appeal was not complete because the grounds of appeal were not sufficiently detailed, I directed Tribunal staff to contact the Applicant by letter and ask for further details. Specifically, the Tribunal letter asked that he provide full and detailed grounds of appeal as required by the Act, and provided him with examples of what constitutes grounds of appeal. The Tribunal letter also noted that if he did not do so, his application could be refused without further notice.

[6] The Applicant responded by elaborating a point by point objection to the findings and conclusions of the General Division member and by once again asking that his

overpayment be written off. He states that "I am in doubt that the amount $1449 may not be correct as the Commission representative made many errors earlier."

[7] First, I note that according to s. 112.1 of the *Employment Insurance Act* (the EI Act) the Tribunal has no jurisdiction to review Commission decisions regarding the writing off of any amounts owing. As such, the Applicant's request for such a write-off cannot succeed. In fact, it is not even clear that the Commission has made a determination on this point yet.

[8] Second, even accepting the entirety of the Applicant's submissions as true, I fail to find any merit in the suggestion that the Applicant is entitled to a new hearing before the General Division. By his own admission, he missed his hearing due to his own inadvertence. The General Division is not alleged to have made any error in proceeding in his absence, and I therefore find that there is no basis to conclude that the Applicant's natural justice rights have been breached by the Tribunal.

[9] Finally, I note that his substantive arguments do not reveal a reviewable error alleged to have been made by the General Division member, and are essentially a blanket objection to the member's decision. No evidentiary basis has been provided to support the argument that the Commission and the General Division erred in concluding that certain earnings existed and must be allocated according to the EI Act.

[10] The role of the Appeal Division is to determine if a reviewable error set out in ss. 58(1) of the Act has been made by the General Division and if so to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the Appeal Division to intervene. It is not our role to re-hear the case *de novo*.

[11] In order to have a reasonable chance of success, the Applicant must explain in some detail how in their view at least one reviewable error set out in the Act has been made. Having failed to do so, this application for leave to appeal does not have a reasonable chance of success and must be refused.

Mark Borer

Member, Appeal Division