



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *C. R. v. Canada Employment Insurance Commission*, 2016 SSTADEI 308

Tribunal File Number: AD-16-484

BETWEEN:

C. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: June 14, 2016

REASONS AND DECISION

INTRODUCTION

[1] On January 22, 2016, the Tribunal's General Division ("the GD") dismissed the Applicant's appeal. The GD held that:

- (a) the Applicant did not report that he had worked and received a salary during the period in question;
- (b) the Applicant knowingly made false or misleading statements or representations;
- (c) the Canada Employment Insurance Commission ("the Commission") exercised its discretion in a judicial manner because it took into account all the relevant facts in the file in rendering its decision to impose a penalty on the Appellant;
- (d) the Commission's decision to issue a Notice of Violation to the Appellant in accordance with section 7.1 of the *Employment Insurance Act*, following a penalty that it had imposed on him for having committed an act or omission, has merit; and
- (e) the Commission exercised its discretion in the judicial manner in imposing the Notice of Violation.

History of the file

[2] In May 2014, the Commission found that the Applicant:

- (a) did not report a portion of his income; and
- (b) filed 15 false reports for which a penalty of \$8,256.00 was imposed on him and a Notice of Violation classified as a "subsequent violation" issued to him.

[3] The Applicant filed a request for reconsideration of that decision with the Commission. In June 2015, the Commission informed the Appellant that it had upheld that decision concerning the penalty imposed on him and the notice of violation issued to him.

[4] The Applicant appealed from that decision before the GD.

[5] The GD hearing was held via video conference on January 15, 2016. The GD rendered its decision on January 22, 2016.

[6] The Applicant filed an application for leave to appeal (“the Application”) before the Appeal Division on March 29, 2016.

[7] The Applicant states in his Application that:

(a) he has good arguments that he was unable to present at the hearing due to his absence;

(b) he was absent because he was recovering from a car accident; and

(c) he had informed the Tribunal of a problem with a medical appointment and requested an adjournment by email on January 3, 2016, and had received no reply from the Tribunal.

[8] The Tribunal requested that the parties file their submissions on the following questions:

(1) whether an extension of time (30 days) to file an application for leave to appeal should be granted or denied; and

(2) whether leave to appeal before the Appeal Division should be granted or refused.

The Tribunal also noted that the Applicant had referred in the Application to an email to the Tribunal dated January 3, 2016, and requested an unhighlighted copy.

[9] The Commission filed its submissions. It contends that the time period for filing the Application is not very long and that the Applicant sent an email on January 3, 2016 requesting an adjournment. It suggested that “the entire matter be referred back to the General Division.”

[10] The Applicant submitted a copy of the email of January 3, 2016, in addition to evidence of his medical appointment and his gradual return to work.

ISSUES

[11] Was the Application filed within the prescribed time limit?

[12] Does the Appeal have a reasonable chance of success?

THE LAW AND ANALYSIS

[13] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (“the DESD Act”) provide that “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and that the Appeal Division “must either grant or refuse leave to appeal.”

[14] 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.”

[15] 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.

Application date of submission

[16] 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.

[17] The GD decision was communicated to the Applicant under cover of a letter dated January 25, 2016. The Application does not state the date on which the Applicant received the decision.

[18] In accordance with paragraph 19(1)(a) of the *Social Security Tribunal Regulations*, I find that the decision of the GD was communicated to the Applicant 10 days after the day on which it was mailed to him, that is, on February 4, 2016.

[19] The Application was received at the Tribunal on March 29, 2016, 54 days after February 4, 2016. It appears to have been filed on March 22, 2016, at “the NCR mailroom,” according to a visible stamp on the document, 47 days after February 4, 2016.

[20] The Application was not filed within the prescribed time limit.

[21] The reasons given by the Applicant for the delay are that the car accident and professional health treatments required a great deal of time and rest. The Commission notes that the time period is not very long and does not oppose an extension of time.

[22] In the circumstances, it is in the interests of justice that I grant the extension of time for the Application.

Leave to appeal

[23] 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.

[24] 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.

[25] The Applicant’s argument that he was deprived of his right to make full answer and defence because he was absent from the hearing has a reasonable chance of success. He requested an adjournment by email 12 days before the date set for the hearing, but the GD does not appear to have seen that request.

[26] The GD noted that the Notice of Hearing was sent to the Applicant and stated that he was satisfied that the Applicant had been informed of the hearing to be held on January 15, 2016, but it did not mention the adjournment request of January 3, 2016.

[27] The Applicant did not have an opportunity to be heard at the hearing before the GD. The appeal has a reasonable chance of success on the ground of a principle of natural justice.

The Appeal

[28] The Respondent consents to the matter being referred back to the GD.

[29] Upon review of the submissions of the parties and the file, I allow the appeal. In view of the principle of the right to be heard (*audi alteram partem*) and the presentation of the evidence that will be necessary, it is appropriate to refer the matter back to the Tribunal's GD.

CONCLUSION

[30] Leave to appeal is granted.

[31] The appeal is allowed and the matter is referred back to the General Division of the Social Security Tribunal of Canada.

Shu-Tai Cheng
Member, Appeal Division