



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. B. v. Canada Employment Insurance Commission*, 2016 SSTA DEI 355

Tribunal File Number: AD-16-488

BETWEEN:

S. 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: July 6, 2016

REASONS AND DECISION

INTRODUCTION

[1] On March 10, 2016, the General Division (“the GD”) of the Social Security Tribunal of Canada (“the Tribunal”) dismissed the Applicant’s appeal. The GD held as follows:

- (a) the issues arose from a notice, dated July 7, 2015, of a reconsideration decision concerning an initial decision of the Commission dated April 23, 2015;
- (b) the issues were:
 - (1) whether there had been an interruption of earnings within the meaning of section 7 of the *Employment Insurance Act* (“the EI Act”) and section 14 of the *Employment Insurance Regulations* (“the EI Regulations”);
 - (2) whether the imposition of a letter of warning issued under section 41.1 of the EI Act for having committed an act or omission in knowingly making false or misleading statements or representations was justified; and
 - (3) whether the issuing of a notice of non-classified violation arising from a letter of warning was justified;
- (c) the Applicant “did not have an interruption of earnings over a period of seven days starting on September 26, 2014, since, during that time, she continued to work for the business until November 24, 2014;”
- (d) the Commission exercised its discretion in a judicial manner in imposing a penalty; and
- (e) the Commission exercised its discretion in a judicial manner in imposing a Notice of Violation.

History of the file

[2] The Applicant filed a claim for regular benefits in September 2014. The Commission communicated its decision to the Applicant on April 23, 2015.

[3] On May 11, 2015, the Applicant requested a reconsideration of the initial decision.

[4] On July 7, 2015, the Commission informed the Applicant that:

(a) the non-established benefit period had not been varied;

(b) the penalty was cancelled and replaced with a warning; and

(c) the very serious violation was replaced with a non-classified violation.

[5] Applicant appealed from that decision before the GD.

[6] The GD hearing took place via teleconference on February 4, 2016. The Applicant and her representative were present. The GD rendered its decision on March 10, 2016.

[7] The Applicant filed an application for leave to appeal (“the Application”) before the Appeal Division on March 31, 2016, within the prescribed time limit.

[8] The Applicant was represented. In her Application, her representative stated that:

(a) the GD had not ruled on the principal ground of appeal in the Commission’s decision of July 13, 2015;

(b) submissions concerning the decision of July 13, 2015, where filed with the GD; and

(c) the GD committed errors referred to in paragraph 58 (1) (a), (b) and (c) of the *Department of Employment and Social Development Act* (“the DESD Act”).

[9] The Tribunal requested that the Respondent file submissions on:

(a) the question whether leave (to appeal) should be granted or denied; and

(b) the Applicant's reason why the GD did not rule on the Commission's notice of decision on July 13, 2015.

[10] The Respondent filed its written submissions and noted that:

(a) this appeal concerns a Commission decision dated April 23, 2015;

(b) there is a Commission decision on other cases dated July 13, 2015;

(c) the Applicant did not ask the Commission to reconsider its decision of July 13, 2015;

(d) only reconsidered decisions may be appealed from before the GD; and

(e) the GD did not commit an error in not ruling on the issues that had not been reconsidered.

[11] On June 2, 2016, the Tribunal, in a letter to her representative, asked the Applicant to file additional written submissions in response to the Respondent's submissions. No reply was submitted by the deadline of June 17, 2016. Nothing was submitted (according to a check done on July 4, 2016).

ISSUES

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

THE ACT 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.

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

[17] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the 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.

[18] The Applicant made reference to paragraphs 58(1) (a), (b) and (c) of the DESD Act in outlining her reasons for appeal. According to those grounds, the primary reason for her Application to the AD is that the GD refused to exercise its jurisdiction by not ruling on the notice of the Commission's decision of July 13, 2015.

[19] Section 113 of the EI Act provides that only reconsidered decisions may be appealed from before the GD.

[20] Since the Applicant did not request that the Commission reconsider its decision dated July 13, 2015, the GD does not have jurisdiction to rule on the decision. Consequently, the GD did not refuse to exercise its jurisdiction. It did not have the necessary jurisdiction to rule on the notice of the Commission's decision of July 13, 2015.

[21] As to the Applicant's position that the GD 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, the Applicant is repeating arguments already made before the GD on the subject of the decision of July 13, 2015.

[22] I find that the 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.

[23] The GD's decision refers to the applicable sections of the EI Act and Regulations and to the case law relevant to the issues under consideration. The GD applied the law to the Applicant's situation and did not err in law in making its decision.

[24] Since the Applicant raises none of the grounds of appeal set forth in subsection 58(1) of the DESD Act, the appeal has no reasonable chance of success.

CONCLUSION

[25] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division