



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 321

Tribunal File Number: AD-15-935

BETWEEN:

A. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: June 21, 2016

REASONS AND DECISION

INTRODUCTION

[1] On July 31, 2015, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal in part and allowed it in part. The Applicant had applied for benefits effective in June 2014. The Commission had determined that she was not available for work. The Applicant requested reconsideration, but the Commission maintained its decision.

[2] The Applicant appealed to the GD of the Tribunal in February 2015. The Alberta Teacher's Association was identified as her Representative in her Notice of Appeal to the GD.

[3] A Notice of Hearing, dated June 5, 2015, was sent to the Applicant and her Representative. A hearing had been scheduled for July 7, 2015 by teleconference.

[4] On June 11, 2015, the Applicant called the Tribunal to request an adjournment of the hearing to another date. This request appears not to have been answered.

[5] The hearing was held in the absence of the Applicant and her Representative.

[6] The Applicant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on August 25, 2015. She received the GD decision on August 11, 2015 and filed the Application within the 30 day time limit.

[7] The Tribunal requested that the Respondent file submissions on whether leave should be granted or refused.

[8] The Respondent filed submissions stating that the matter should be returned to the GD for rehearing and redetermination.

ISSUE

[9] Whether the appeal has a reasonable chance of success.

[10] If the appeal is determined to have a reasonable chance of success, the AD must decide whether to dismiss the appeal, give the decision that the GD should have given, refer the matter back to the GD for reconsideration in accordance with any directions that the AD considers appropriate or confirm, rescind or vary the decision of the GD in whole or in part.

LAW AND ANALYSIS

[11] According to subsections 56(1) and 58(3) of the *Department of Employment and Social and Development Act* (DESD Act), “an 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”.

[12] 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.”

[13] 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.

[14] The Applicant’s grounds of appeal are that:

- a) She requested an adjournment on June 11, 2015 by telephone call to the Tribunal. She explained that she had previously made flight reservations to leave early in the morning of July 7, 2015;
- b) Neither she nor her Representative were contacted by the Tribunal with a response to her adjournment request;

- c) The hearing proceeded in her absence (and the absence of her Representative); and
- d) The GD decision is wrong for many reasons including the legal tests for availability and the presumption of non-availability that were applied.

[15] The Tribunal's file includes a telephone log which shows that the Applicant did contact the Tribunal on June 11, 2015. However, it appears that the GD Member who heard and decided the matter was not aware that the Applicant had requested an adjournment of the hearing weeks before the scheduled hearing date.

[16] The GD decision notes:

- a) **A. M.**, the Claimant did not attend the teleconference hearing. However, the Tribunal is bound by the Employment Insurance legislation and therefore, being satisfied by confirmation from Canada Post that the Claimant and he [sic] representative had received notice of the hearing, under the authority of section 12 of the Social Security Tribunal Regulations, the Tribunal proceeded in the Claimant's absence.

and

- b) [31] The Claimant did not attend the teleconference hearing. However, the Tribunal is bound by the Employment Insurance legislation and therefore, being satisfied by confirmation from Canada Post that the Claimant had received notice of the hearing, under the authority of section 12 of the Social Security Tribunal Regulations, the Tribunal proceeded in the Claimant's absence.

[17] The Tribunal must be satisfied that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[18] While the Application does not refer to the grounds of appeal in subsection 58(1) of the DESD Act, it does include submissions that relate to each of the enumerated grounds: natural justice, error of law and erroneous findings of fact.

[19] The Respondent was not present at the GD hearing, although it did file written representations for the GD's consideration. Before the AD, the Respondent submits that leave to appeal should be granted and the matter returned to the GD.

[20] Given the fundamental nature of the right to be heard, the circumstances of this case and the Respondent's agreement, I am satisfied that the appeal has a reasonable chance of success.

[21] Considering the grounds for appeal raised by the Applicant and my review of the GD decision and the file, I grant the application for leave to appeal.

[22] In addition, given all of the above and the Respondent's consent and request, I allow the appeal. Because this matter will require the parties to present evidence, a hearing before the GD is appropriate.

CONCLUSION

[23] The application for leave to appeal is granted.

[24] The appeal is allowed. The case will be referred back to the General Division of the Tribunal for reconsideration.

Shu-Tai Cheng
Member, Appeal Division