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

Citation: *L. H. v. Canada Employment Insurance Commission,* 2016 SSTADEI 324

Tribunal File Number: AD-16-598

BETWEEN:

L. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division – Leave to Appeal

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: June 22, 2016

REASONS AND DECISION

INTRODUCTION

[1] On April 8, 2016, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal of a decision of the Canada Employment Insurance Commission (Commission). The Applicant had qualified to receive benefits effective March 1, 2015 and was deemed by the Commission to be entitled to 25 weeks of benefits. The Applicant requested reconsideration of this decision which request was denied by the Commission. The Applicant appealed to the GD of the Tribunal.

[2] The Applicant attended the GD hearing, which was held by teleconference on April 7, 2016. The Respondent did not attend.

[3] The GD determined that:

a) The issue on appeal is whether the Applicant received the correct number of entitlement weeks of benefits, during his benefit period, based on the *Employment Insurance Act* (the EI Act);

b) The Canada Revenue Agency (CRA) had determined that the Applicant had 1240 hours of insurable employment for the period under review;

c) Based on 1240 hours of insurable employment, the Applicant was entitled to a maximum of 25 weeks of benefits, which is what he had received; the formula that was applied by the Commission was correct;

d) The Tribunal cannot make changes to the number of insurable hours; the CRA has this jurisdiction; and

e) The Tribunal has no ability to intervene under the EI Act.

Based on these conclusions, the GD dismissed the appeal.

[4] The Applicant filed a letter which was treated an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on April 22, 2016. It was filed within the 30 day time limit.

[5] The Tribunal asked the Applicant to provide further information to complete the Application. The Applicant replied prior to the deadline given.

ISSUE

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

LAW AND ANALYSIS

[7] Pursuant to section 57 of the *Department of Employment and Social Development Act* (DESD Act), an application must be made to the AD within 30 days after the day on which the decision appealed from was communicated to the appellant.

[8] According to subsections 56(1) and 58(3) of the 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."

[9] 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."

[10] 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.

[11] The Applicant's grounds of appeal are described in hand written letters filed in April and May 2016. The Applicant's arguments can be summarized as follows:

a) He attended the GD hearing, and it was about 15 minutes long;

b) The GD Member explained that the CRA is the only one permitted to make decisions on his hours of work;

c) No one listened to him; he said that the employer's evidence on his work hours was wrong; and

d) He does not feel like he received a fair hearing.

[12] The GD decision stated the correct legislative provisions and applicable jurisprudence when considering the issue of insurable hours and entitlement weeks, at pages 3, 4, 9 and 10.

[13] The GD decision, at pages 5 to 8, summarized the evidence in the file, the arguments made at the hearing and the Applicant's submissions and position taken on the record.

[14] The Applicant argued similar points before the GD as he stated in the Application before the AD, i.e. that he actually worked many more hours than 1240 and should receive 52 weeks of benefits.

[15] The GD noted that the Applicant asserted that he worked many more hours than was recorded by the employer and that he takes issue with the ruling of the CRA. However, the GD decision correctly stated that the ruling of the CRA was binding on the Tribunal and that the requirements of the EI Act cannot be ignored, even in sympathetic circumstances.

[16] In order to grant leave to appeal, the Tribunal must be satisfied that the reasons for appeal fall within one of the grounds of appeal in section 58(1) of the DESD Act and that the appeal has a reasonable chance of success.

[17] If leave to appeal is granted, then the role of the AD is to determine if a reviewable error set out in subsection 58(1) of the DESD Act has been made by the GD and, if so, to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the AD

to intervene. It is not the role of the AD to re-hear the case anew. It is in this context that the AD must determine, at the leave to appeal stage, whether the appeal has a reasonable chance of success.

[18] As discussed above, the GD decision was not based on an error of law or erroneous findings of fact.

[19] In terms of the Applicant's submission that he did not receive a fair hearing, he states that the GD Member did not listen to him.

[20] In *Arthur* v. *Canada (A.G.)*, 2001 FCA 223, the Federal Court of Appeal stated that an allegation of prejudice or bias of a tribunal is a serious allegation. It cannot rest on mere suspicion, pure conjecture, insinuations or mere impressions of the applicant. It must be supported by material evidence demonstrating conduct that derogates from the standard. The duty to act fairly has two components: the right to be heard and the right to an impartial hearing.

[21] The GD decision set out the position and arguments of the Applicant. While the Applicant may have had the impression that he was not listened to, the GD Member noted his position and his arguments in the decision and explained that despite the Applicant's arguments and the GD Member's sympathy for the Applicant's case, the GD decision must be based on the law.

[22] Even taking the Applicant's arguments - that the hearing was short and the GD Member talked about the CRA's jurisdiction - as proved, they are insufficient to show that the GD did not give the Applicant a sufficient opportunity to be heard or that the GD was prejudiced or biased.

[23] I have read and carefully considered the GD's decision and the record. There is no suggestion that the GD failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law or any erroneous findings of fact which the GD may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[24] As a result, I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[25] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division