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

[TRANSLATION]

Citation: *H. J. v. Canada Employment Insurance Commission,* 2016 SSTADEI 329

Tribunal File Number: AD-16-456

BETWEEN:

H. J.

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 23, 2016

Canada

REASONS AND DECISION

INTRODUCTION

[1] On February 23, 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 only issue is the refusal of the Canada Employment Insurance Commission ("the Commission") to extend the 30-day period provided to submit a reconsideration request under section 112 of the *Employment Insurance Act* ("the Act") and section 1 of the *Reconsideration Request Regulations* ("the Reconsideration Regulations");

(b) "the Tribunal may interfere with the Commission's decision only where it has exercised its discretion in a 'non-judicial' manner, that is, on the basis of irrelevant considerations or without taking relevant considerations into account;"

(c) The Applicant "had in hand the necessary information to act immediately and to request that the Commission reconsider its decision dated July 25, 2011," "did not provide a reasonable explanation in support of his request for extension" and "did not demonstrate a continuing intention to request a reconsideration;" and

(d) the Commission exercised its discretion in a judicial manner in denying the request for extension.

History of the file

[2] In July 2011, the Commission refused to grant the Applicant benefits. It found that the Applicant had needed 910 hours of insurable employment, whereas the number of hours of insurable employment accumulated during the qualifying period was 393.

[3] The Applicant requested a reconsideration of the initial decision of July 25, 2011, on July 15, 2015, that is 1,421 days late. He alleged that he had been delayed in doing so by a serious error on the Commission's part because it had not included all his Records of Employment in his file.

[4] On August 13, 2015, the Commission informed the Applicant that it would not reconsider its decision.

[5] The Applicant appealed that decision to the General Division.

[6] The General Division's hearing was held via teleconference on February 22, 2016. The GD rendered its decision on February 23, 2016.

[7] The Applicant filed an application for leave to appeal ("the Application") before the Appeal Division on March 18, 2016, within the prescribed time period

[8] The Applicant notes in his Application that:

(a) he has good arguments and that his arguments "were not considered" by the General Division;

(b) he believed in good faith (in the Commission's decision) that his hours had come from three Records of Employment;

(c) the Commission should have asked him to provide his other Records of Employment; and

(d) he did not "act on the [Commission's] 2011 decision" because he thought he had "no chance of winning."

ISSUES

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

THE LAW AND ANALYSIS

[10] 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."

[11] Subsection 58(2) 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".

[12] 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.

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

[14] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of law, fact or jurisdiction, or relating to a principle of natural justice the answer to which may lead to the setting aside of the decision under review.

[15] The Applicant made no reference to subsection 58 (1) of the DESD Act in outlining his grounds for appeal. According to those grounds, he appears to suggest 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.

[16] It is not up to the Member of the Appeal Division who has to determine whether to grant leave to appeal to clarify the grounds of appeal or to reweigh and reassess the evidence submitted before the General Division. Based on my reading of the file and of the GD's decision, the reasons that the Applicant raised in his Application – that he had relied on the

Commission and that the Commission did not assess all his Records of Employment – were previously advanced before the GD.

[17] Mere repetition of the arguments already made before the General Division is not sufficient to show that one of the above grounds of appeal has a reasonable chance of success.

[18] An appeal is not a new hearing on the merits of the Applicant's claim for Employment Insurance benefits. This is a request for reconsideration filed more than 365 days late.

[19] 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.

[20] The GD's decision referred to the applicable *Employment Insurance Act*, the *Reconsideration Request Regulations* and the case law relevant to a reconsideration request filed late. The GD applied the law to the Applicant's situation and did not err in law in making its decision.

[21] Since the Applicant does not raise any of the grounds of appeal set out in subsection 58(1) of the Act, the appeal has no reasonable chance of success.

CONCLUSION

[22] Leave to appeal is denied.

Shu-Tai Cheng
Member, Appeal Division