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

Citation: *I. O. v. Canada Employment Insurance Commission,* 2016 SSTADEI 341

Tribunal File Number: AD-15-1303

BETWEEN:

I. O.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division– Appeal Decision

DECISION BY: Pierre Lafontaine

HEARD ON June 23, 2016

DATE OF DECISION: June 28, 2016

Canada

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On August 21, 2015, the General Division determined that the Appellant had insufficient hours of insured employment to establish a claim pursuant to section 7 of the *Employment Insurance Act* (the *"Act"*).

[3] The Appellant requested leave to appeal to the Appeal Division on December 1st, 2015 after receiving the General Division decision on October 9, 2015. The late application and the permission to appeal were granted on December 17, 2015.

TYPE OF HEARING

[4] The Tribunal held a telephone hearing for the following reasons:

- the complexity of the issue(s) under appeal;
- the fact that the credibility of the parties is not anticipated being a prevailing issue;
- the information in the file, including the need for additional information;
- The requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

[5] At the hearing, the Appellant was present and the Respondent was represented by Carol Robillard.

THE LAW

[6] 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.

ISSUE

[7] The Tribunal must decide if the General Division erred in fact and in law when it concluded that the Appellant had insufficient hours of insured employment to establish a claim pursuant to section 7 of the *Act*.

ARGUMENTS

[8] The Appellant submits the following arguments in support of his appeal:

- According to the Respondent's interpretation of the decision of the General Division, he is still required to have 875 hours which is over and above the required insurable hours to be eligible for benefits even though the General Division decision was in his favor;

- The General Division recommended fewer hours to be eligible than the hours required by the Respondent;

- The insurable hours required to establish his regular claim was 700 hours and he had 724 insurable hours which makes him fully eligible for benefits;

- The General Division member who handled his case over the phone acknowledged the number of hours he had on file (724) and promised to take it into consideration;

- He is begging for help since he is currently experiencing financial hardship.

[9] The Respondent submits the following arguments against the appeal:

- The Federal Court of Appeal confirmed the principle that subsection 7.1(1) of the *Act* provides for an increase in required hours if a person accumulates a violation for a 260 week period commencing on the date in which the notice of violation is issued;

- Having reviewed the facts of this case and finding the violation should have been a minor violation, the General Division correctly determined the Appellant required fewer hours than originally stated to qualify for regular benefits;

- The General Division consequently correctly applied the legislation to the facts in determining that the Appellant still did not have sufficient insurable hours to qualify as he required 875 hours but had accumulated only 724 hours between October 20, 2013 and October 18, 2014;

- There is no evidence that the General Division acted impartially, erred in law or made an erroneous finding of fact in a perverse or capricious manner.

STANDARD OF REVIEW

[10] The Appellant made no representations regarding the applicable standard of review.

[11] The Respondent submits that the correct standard of review for questions of law is correctness and for mixed questions of fact and law is reasonableness - *Martens v. Canada (AG)*, 2008 FCA 240.

[12] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (AG) v. Jean*, 2015 FCA 242, indicates in paragraph 19 of its decision that "when it acts as an administrative appeal tribunal for decisions rendered by the General Division of the Social Security Tribunal, the Appeal Division does not exercise a superintending power similar to that exercised by a higher court".

[13] The Federal Court of Appeal further indicated that "not only does the Appeal Division have as much expertise as the General Division of the Social Security Tribunal and thus is not required to show deference, but an administrative appeal tribunal also cannot exercise the review and superintending powers reserved for higher provincial courts or, in the case of "federal boards", for the Federal Court and the Federal Court of Appeal".

[14] The Court concluded that "when it hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that *Act"*.

[15] The mandate of the Appeal Division of the Social Security Tribunal as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada*, 2015 FCA 274.

[16] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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 Tribunal must dismiss the appeal.

ANALYSIS

[17] When it dismissed the appeal of the Appellant on the issue of insurable hours, the General Division concluded that:

> "[46] The Tribunal finds that in the Commission's notice dated February 6, 2009 the Commission does not mention an initial violation in the body of the letter. The Tribunal further finds that in the Commission's notice dated November 19, 2009 indicates that this is the first incident of improper reporting or omitting to provide

> information because the evidence on the Claimant's file indicates that there had been no previous incidences.
>
> [47] The Tribunal finds this to be very inconsistent and confusing for the Claimant and as a result the Tribunal finds that the violation imposed in the November 19, 2009 notice is not a subsequent violation but rather the first official violation as stated in the notice, which requires fewer hours to qualify for benefits than a subsequent violation.
>
> [48] Nevertheless the legislation is clear and that in order to qualify for regular EI benefits as a new entrant or re-entrant the Claimant must have at least the number of hours of insurable employment set out in Section 7 of the *Act*.
>
> [49] The Tribunal finds that the Claimant only had 724 hours of insurable employment and does not meet the required 875 insurable hours needed under a minor violation, and as a result does not satisfy Section 7 of the *Act*."

[18] The Appellant submits in appeal that the General Division rendered a decision in his favor by reducing the required hours under the *Act* but that the Respondent is refusing to follow the decision.

[19] The Tribunal notices that the General Division did conclude from the evidence that there was no subsequent violation and that less insurable hours than originally stated were required from the Appellant to qualify.

[20] However, the General Division also correctly determined that there still was a first official violation on record. Therefore, the Appellant only had 724 hours of insurable employment and did not meet the required 875 insurable hours needed under a minor violation, and as a result did not satisfy section 7 of the *Act*.

[21] Unfortunately for the Appellant, the requirements of the *Act* do not allow any discrepancy and provide no discretion to the Tribunal to correct the lack of insurable hours to establish a claim – *Canada (AG) v. Lévesque*, 2001 FCA 304.

[22] After carefully reviewing the file, the Tribunal finds that the General Division considered all the evidence before it and that its decision complies with the law and the decided cases. There is no reason for the Tribunal to intervene.

CONCLUSION

[23] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division