



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. S. v. Canada Employment Insurance Commission*, 2016 SSTADEI 359

Tribunal File Number: AD-15-848

BETWEEN:

A. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

DECISION BY: Pierre Lafontaine

DATE OF HEARING: June 7, 2016

DATE OF DECISION: July 7, 2016

REASONS AND DECISION

DECISION

[1] The Tribunal dismisses the appeal.

I INTRODUCTION

[2] On June 9, 2015, the General Division of the Tribunal found cause to deny the Appellant an extension of the time for appealing to the General Division.

[3] The Appellant filed an application for leave to appeal to the Appeal Division on July 13, 2015 after receiving the decision on June 22, 2015. Leave to appeal was granted on September 12, 2015.

FORM OF HEARING

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

- the complexity of the issue or issues;
- the fact that the parties' credibility was not one of the main issues;
- the information on file, including the need for additional information; and
- the need to proceed as informally and quickly as possible while complying with the rules of natural justice.

[5] The Appellant was present at the hearing and represented herself. The Tribunal allowed the Appellant to submit additional written comments after the hearing through her counsel. The Respondent was represented by Manon Richardson.

THE LAW

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* states that the only grounds of appeal are that:

- 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 or order, whether or not the error appears on the face of the record; or
- c) the General Division based its decision or its order 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 determine whether the General Division erred in refusing to allow the Appellant an extension of the time for appealing.

ARGUMENT

[8] The Appellant's arguments in support of her appeal are as follows:

- the General Division seems to have erred in respect of the date of the decision in refusing the write-off, without regard for the date received;
- the General Division erred in law by limiting the grounds for granting an extension of the time to appeal to steps taken exclusively with the Tribunal;
- the General Division erred in law in finding that the Respondent did not have jurisdiction to write off a debt;
- the General Division erred in law when it found that the appeal had no chance of success whereas the matter of writing off is currently pending before the Federal

Court of Appeal and of current legal interest following the reasons of Stratas J.A. in *Steel v. Canada (AG)*, 2011 FCA 153; and

- the General Division failed to observe a principle of natural justice by proceeding through written submissions in the difficult circumstances mentioned by the Respondent.

[9] The Respondent's arguments against the appeal are as follows:

- The General Division did not err in law or in fact and it properly exercised its jurisdiction;
- The Federal Court of Appeal has established the criteria to be considered in authorizing an extension of the time for filing an appeal. The four criteria are: a continuing intention to appeal, an arguable case (reasonable chance of success), a reasonable explanation for the delay, and prejudice to other parties concerned;
- The General Division reviewed the four factors and gave an explanation for each (AD1-12 to AD1-14);
- Despite the notice of July 11, 2014 and the Respondent's telephone call on August 13, 2014, the General division of the Tribunal did not receive an application to appeal (GD2-1) until October 31, 2014 (according to the SST stamp);
- Nothing on file shows that the Appellant made contact with anyone during the interval. On the contrary, it was the *Canada Revenue Agency* that contacted the Appellant in writing on October 21, 2014 informing her that she had to repay her entire debt or make arrangements (GD2-6);
- Concerning the write-off, neither the Board of Referees nor the Tribunal have the jurisdiction to make a determination on the matter of write-offs. Therefore, the Appellant's appeal on the merits of the issue has no reasonable chance of success.

STANDARDS OF REVIEW

[10] The Appellant made no submissions concerning the applicable standard of review. The Respondent submits to the Tribunal that the standard of review applicable to a decision of a Board of Referees (now the General Division) or an Umpire (now the Appeal Division) on questions of law is correctness (*Martens v. Canada (AG)*, 2008 FCA 240) and that the standard of review applicable to questions of mixed fact and law is reasonableness (*Canada (AG) v. Hallée*, 2008 FCA 159).

[11] The Tribunal notes that the Federal Court of Appeal, in *Canada (AG) v. Jean*, 2015 FCA 242, states at paragraph 19 of its decision that when the Appeal Division “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.”

[12] The Federal Court of Appeal goes on to underscore:

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.

[13] The Federal Court closed by stating, “Where 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.”

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

[15] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law or 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

[16] The Appellant is appealing the decision of the General Division (GD) of the Social Security Tribunal, which refused to allow her an extension of time to appeal to the General Division.

[17] The General Division determined on the strength of the evidence on file that the Appellant had not shown a continuing intention to appeal, given a reasonable explanation for her delay, or have an arguable case.

[18] More specifically, the General Division determined the following based on the arguable case criteria:

[Translation]

[17] The Federal Court of Appeal has found that an arguable case at law is akin to whether, legally, an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Minister of Social Development)*, 2010 FCA 63. Under section 56 of the *Employment Insurance Regulations*, the Tribunal has no jurisdiction to reach a decision concerning the write-off of a debt. The case therefore has no reasonable chance of success legally speaking.

[19] In essence, the Appellant is arguing that the Respondent did not give an opinion concerning the Board of Referee's recommendation on writing off her debt. As mentioned by the General Division, under s. 56 of the *Employment Insurance Regulations*, the Tribunal has no jurisdiction to make write-off decisions.

[20] Furthermore, although the Tribunal had to consider the Respondent's refusal on the matter of the write-off (GD5-20), such decision cannot form the basis for an appeal to the Tribunal - *Steel v Canada (AG)*, 2011 FCA 153, *Bernatchez v. Canada (AG)*, 2013 FC 111. The Federal Court of Canada alone has jurisdiction to allow a remedy against this issue.

[21] Interestingly, the new section 112.1 of the *Employment Insurance Act* provides that a claimant may not request the reconsideration of a decision by the Respondent respecting a write-off and, therefore, cannot appeal such decision to the General Division. In this way, Parliament seems satisfied with the interpretation of the Federal Court of Appeal in its many decisions on this question of jurisdiction.

[22] Accordingly, the decision of the General Division shows that it was not in the interests of justice to grant the Appellant an extension of the time to appeal -- *X (Re)*, 2014 FCA 249, *Grewal v. Minister of Employment and Immigration*, [1985] 2 F.C. 263 (F.C.A.).

[23] Intervention by the Tribunal is unwarranted.

[24] However, the Tribunal advises the Respondent to consider the write-off recommendation of the Board of Referees, which was able to attest to the Appellant's extremely difficult situation.

CONCLUSION

[25] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division