



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. A. v. Canada Employment Insurance Commission*, 2016 SSTADEI 369

Tribunal File Number: AD-15-947

BETWEEN:

S. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: July 14, 2016

REASONS AND DECISION

INTRODUCTION

[1] On July 16, 2016, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal. The GD determined that:

- a) The Applicant presented a claim for benefits;
- b) She was on vacation during her claim period for an expected three weeks (from December 18, 2014 to January 8, 2016), and was hospitalized during her vacation to receive emergency care;
- c) The physician did not authorize her to fly back to Canada until January 19, 2015;
- d) The Applicant returned to Canada on February 5, 2015;
- e) The Applicant did not present evidence showing that the conditions provided in section 55(1) a) of the *Employment Insurance Regulations* (the *Regulations*) were met; and
- f) The Appellant does not meet the conditions provided in the *Regulations* to qualify for benefits.

History of the file

[2] The Applicant filed a claim for regular benefits in January 2015. The Commission determined that the Applicant was not entitled to benefits for the period from December 22, 2014 to February 5, 2015 because she was outside of Canada.

[3] The Applicant requested a reconsideration of the decision. The Commission held by its initial decision.

[4] The Applicant appealed the decision to the GD.

[5] The GD held a teleconference hearing on July 16, 2015. The Applicant was present. The Respondent was not present. The GD rendered its decision on July 29, 2015.

[6] The Applicant filed an application for leave to appeal (Application) to the Appeal Division on August 28, 2015, within the time limit.

[7] The Applicant notes that:

- a) 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;
- b) The erroneous finding of fact is found at paragraph [25] of the GD's decision; and
- c) The Applicant's medical record is appended to her Application.

[8] The Tribunal asked the parties for their comments on the matter of whether leave (to appeal) should be granted or denied, and it also asked the Applicant: [translation] "Which of the documents appended (to the Application) were not entered into evidence before the General Division? For each document that was not entered into evidence before the General Division, please state the reason."

[9] The Respondent filed its written submissions and underscored that:

- a) [translation] "Medical evidence does not affect the decision made in the case"; and
- b) Employment Insurance benefits are not payable to persons who are outside of Canada unless otherwise specified in the *Regulations*.

[10] The Applicant did not present written submissions or a response to the Tribunal's questions.

ISSUE

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

THE LAW AND ANALYSIS

[12] As stated in subsections 56(1) and 58(3) of the *Act*, "[a]n 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."

[13] Subsection 58(2) of the *Act* provides that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

[14] Under subsection 58(1) of the *Act*, 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, 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.

[15] The Tribunal grants leave to appeal if it is satisfied that the applicant has shown that at least one of the above grounds of appeal is present, and that one of the grounds has a reasonable chance of success.

[16] To do so, the Tribunal, in accordance with subsection 58(1) of the *Act*, must be able to see a question of law, fact or jurisdiction or a principle of natural justice the answer to which may lead to the setting aside of the decision attacked.

[17] The Applicant referred to paragraph 58(1) c) of the *Act* to specify her grounds of appeal. Based on her reasons for appeal, the GD noted that she had not brought sufficient evidence and that she is submitting her medical record to [translation] “dispel any doubts concerning [her] health problem.”

[18] The documents presented show that the Applicant had surgery on January 8, 2015 and was hospitalized from January 11 to 21, 2015 in Martinique.

[19] I note that the GD accepted that the Applicant had had surgery in January 2015 in Martinique.

[20] The GD found, at paragraph [45] of its decision:

[Translation] The Tribunal can imagine that the Appellant may have had health problems outside of Canada but she failed to provide sufficient evidence in this regard. She has not satisfied the conditions provided in the *Regulations* to entitle her to benefits.

[21] The new documents, if admissible by the AD, do not add to an analysis of the conditions provided in section 55(1) a) of the *Regulations*. It is therefore unnecessary for the AD to determine whether these documents are admissible under an appeal to the AD.

[22] It is not up to the Appeal Division Member, who has to determine whether to grant leave to appeal, to reweigh and reassess the evidence submitted before the General Division. Based on my reading of the record and the decision by the GD, the reasons given by the Applicant in her Application—that she is entitled to Employment Insurance benefits given her surgery while she was outside of Canada—were previously brought before the GD.

[23] Concerning the Applicant's position that the GD founded its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it, the Appellant repeated the same arguments presented to the GD for the decision on July 29, 2015. The following facts are not in dispute: the Applicant has proof that she was outside of Canada on vacation and she was delayed from returning due to the surgery she received abroad. Also, there is no evidence that the Applicant meets the conditions provided in the *Regulations* to qualify for benefits.

[24] 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.

[25] The decision by the GD mentions the applicable sections of the *Employment Insurance Act* and the *Regulations* and case law of relevance to the questions at issue. The GD applied the law to the Applicant's situation. The decision rendered is not subject to an error of law.

[26] Since the Applicant did 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

[27] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division