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

[TRANSLATION]

Citation: *T. M. v. Canada Employment Insurance Commission*, 2016 SSTADEI 489

Tribunal File Number: AD-16-1015

BETWEEN:

T. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 26, 2016

Canada

REASONS AND DECISION

DECISION

[1] The Tribunal grants leave to appeal before the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On July 11, 2016, the Tribunal's General Division found that the Applicant did not have the required number of insurable hours to establish a claim for benefits under section 7 of the *Employment Insurance Act* (Act) and that the Applicant's antedate request could not be accepted in accordance with subsection 10(4) of the Act.

[3] On August 8, 2016, the Applicant allegedly filed an application for leave to appeal to the Appeal Division.

ISSUE

[4] The Tribunal must determine whether the appeal has a reasonable chance of success.

THE LAW

[5] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development 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".

[6] Subsection 58(2) of the *Department of Employment and Social Development Act* states that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

ANALYSIS

[7] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the following are the only grounds of appeal:

(a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) The Board of Referees erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) The Board of Referees 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.

[8] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the application for leave to appeal stage, the Applicant does not have to prove their case.

[9] The Tribunal will grant leave to appeal if it is satisfied that any of the above grounds of appeal has a reasonable chance of success.

[10] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact, or jurisdiction to which the response might justify setting aside the decision under review.

[11] In light of the foregoing, does the Applicant's appeal have a reasonable chance of success?

[12] In her support of her application for leave to appeal, the Applicant claims that she is ill and has anorexia, and that she now has bulimia. She calls into question whether the specified time period could simply be a formality given the nature of her illness.

[13] She argues that the Respondent's argument that she is not ill given that she has only been hospitalized is not serious. She believes that there is some confusion as to the number of hours required to qualify for benefits.

[14] On August 17, 2016, the Tribunal sent the Applicant a written request to provide a detailed account of her grounds for appealing the General Division's decision, with a deadline to respond of September 19, 2016. The Applicant responded to the Tribunal's request on September 19, 2016.

[15] She states that she did not stop working, but that she had been dismissed because her illness prevented her from meeting the objectives set by her employer, Petro Canada. She was late in filing for benefits because her employer had misinformed her about her eligibility. She maintains that she is within the one-year deadline prescribed by the Act to file a claim. She submits that she does not reside in the region of Montreal. She submits that if she is not entitled to sickness benefits, then she should be entitled to regular benefits because she is only four (4) hours short. She argues that employer's possible margin of error as well as the fact that her illness probably caused her to forget to record all her hours must be taken into account.

[16] Given her illness, she wonders if it would be possible to extend her qualifying period to include a total of 570 hours. She argues that being hospitalized prevented her from working. She could provide another detailed letter indicating her complete inability to work, signed by her attending physician.

[17] The Applicant essentially submits that the General Division erred in fact and in law by refusing to extend her qualifying period on the basis of her inability to work during her qualifying period, in accordance with subsection 8(2) of the Act. She also states that she was not permitted to present before the General Division proof of her inability to work during this period.

[18] Upon review of the appeal file, the General Division's decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant raised a question, the response to which could lead to the setting aside the decision challenged.

CONCLUSION

[19] The Tribunal grants leave to appeal.

Pierre Lafontaine

Member, Appeal Division