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

Citation: *T. H. v. Canada Employment Insurance Commission,* 2016 SSTADEI 520

Tribunal File Number: AD-16-925

BETWEEN:

T. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: October 18, 2016

DATE OF DECISION: October 21, 2016

Canada

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On June 14, 2016, the General Division of the Tribunal decided that the Respondent correctly refused to extend the 30-day period to request a reconsideration of a decision under section 112 of the *Employment Insurance Act* (*Act*) and section 1 of the *Reconsideration Request Regulations*.

[3] The Applicant requested leave to appeal to the Appeal Division on July 13, 2016. Permission to appeal was granted on July 19, 2016.

TYPE OF HEARING

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

- The complexity of the issue under appeal.
- 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] The Appellant was present at the hearing. The Respondent was represented by Warren Dinham.

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 when it concluded that the Respondent correctly refused to extend the 30-day period to request a reconsideration of a decision under section 112 of the *Act*.

ARGUMENTS

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

- His employer lied on the record of employment and he eventually lost his employment insurance benefits because of that;

- He had a meltdown following the loss of his employment and the denial of his employment insurance benefits;

- The Alberta Employment Standard Officer (*AES*) determined that he had been dismissed and that he did not quit his job;

- He was paid termination notice by his Employer following the decision of the *AES* Officer;

- He filed a medical note that explains the delay in requesting the review of the decision of the Respondent denying him benefits.

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

- The General Division did not err in fact and in law when it rendered its decision;
- The Federal Court has confirmed the principle that discretionary decisions of the Respondent should not be disturbed unless the Respondent failed to exercise its discretion in a judicial manner;
- The General Division, as outlined in its analysis and findings, has determined that the Respondent acted in a judicial manner in denying the Appellant's request for reconsideration;
- The Tribunal's findings of fact and its decision that the extension of time within which to bring the appeal be denied, would appear to fall entirely within the parameters of the legislation and jurisprudence and as a result is not an error in either the interpretation or application of the law.

STANDARD OF REVIEW

[10] The Appellant did not submit any arguments related to the applicable standard of review.

[11] The Respondent submits that the Appeal Division does not owe any deference to the conclusions of the General Division with respect to questions of law, whether or not the error appears on the face of the record. However, for questions of mixed fact and law and questions of fact, the Appeal Division must show deference to the General Division. It can only intervene if 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 - *Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

[12] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (A.G.) v. Jean*, 2015 FCA 242, indicates in 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".

[13] The Federal Court of Appeal further indicates that "[n]ot 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 Federal Court of Appeal concludes that when the Appeal Division "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 (A.G.)*, 2015 FCA 274.

[16] In accordance with the above instructions, 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] The Appellant was issued a notice of disqualification dated September 11, 2014 (GD3-11 to GD3-12). He acknowledged in his request for reconsideration filed on October 2, 2015 that he had been made verbally aware of the decision of the Respondent on September 8, 2014.

[18] The Appellant waited 386 days to request reconsideration. He submitted that the reasons for the delay in making the request for reconsideration where "medical reasons and Employment Standards decision" (GD3-13 to GD3-14).

[19] As mentioned by the General Division, the legislation has given the Respondent the discretionary power to extend the 30-day period to request a reconsideration of a decision under section 112 of the *Act*.

[20] In order for the Appellant to succeed in his present appeal, he must show that the General Division erred when it concluded that the Respondent properly exercised its discretion to deny the extension of time. An improper exercise of discretion occurs when the Respondent gives insufficient weight to relevant factors, proceeds on a wrong principle of law, erroneously misapprehends the facts, or where an obvious injustice would result.

[21] The Respondent considered that since the appellant was well enough to pursue his recourse against his employer for separation monies, he was well enough to submit a request for a formal EI reconsideration. It considered that waiting for the AES decision was not a reasonable explanation for the delay in asking for reconsideration. It considered that the decision of a third party was not binding on the Respondent that had already determined that the Appellant had quit his job. Furthermore, if his condition was impacted so severely, he would not be considered available to work. The Respondent considered the issue of prejudice. In a claim for regular benefits, the claimant must submit ongoing, timely biweekly reports which affirm entitlement conditions. By providing these reports one year later, the Respondent is not afforded the opportunity to assess entitlement conditions currently, but may only do so based on the recollection of the Appellant.

[22] For the above mentioned reasons, the Tribunal finds that the General Division did not err when it concluded that the Respondent had exercised its discretion properly in the present case. The Respondent gave sufficient weight to all relevant factors, did not proceed on a wrong principle of law, did not erroneously misapprehends the facts, and no obvious injustice would result in refusing the extension of time.

CONCLUSION

[23] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division