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

[TRANSLATION]

Citation: *M. S. v. Canada Employment Insurance Commission*, 2016 SSTADEI 558

Tribunal File Number: AD-16-1262

BETWEEN:

M. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to appeal decision by: Pierre Lafontaine

Date of decision: November 24, 2016

Canada

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On October 18, 2016, the Tribunal's General Division found that the Applicant's request for an antedate pursuant to subsection 10(4) of the *Employment Insurance Act* (Act) should not be granted.

[3] The Applicant filed an application for leave to appeal to the Appeal Division on November 3, 2016.

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 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.

[8] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first, and lower, hurdle for the applicant to meet 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 his 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] The Applicant maintains that the delay was caused by his two previous employers, whom have been found guilty, and that the Respondent should accept the hours he has worked. He argues that the Respondent refuses to go back 104 weeks (2 years) in order to recognize the hours he worked and qualify him for benefits.

[13] The General Division stated the following in its decision:

> [translation]
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> [40] To support his argument, the Appellant refers to the total of 928 hours worked; however, these hours were worked over 2 well-defined periods in the Act. In the 52-week period preceding the qualifying period, the Appellant should have accumulated 490 hours, whereas he had accumulated only 371 hours. In his qualifying period, he needed to accumulate 910 hours whereas he had only 557 hours. He did indeed accumulate a total of 928 hours of insurable employment, but over 2 separate qualifying periods.

[14] The Tribunal finds that subsection 10(4) of the Act, which allows for an antedate claim, is clear:

> 10(4) An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits on the earlier day and that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made.
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> (Emphasis added by the undersigned)

[15] Despite the fact that the Respondent and the General Division both found that the reason cited by the Applicant for the delay was just within the meaning of the Act, he still does not meet the eligibility criteria on the earlier date, that is, enough hours of insurable employment to establish the antedate claim on January 18, 2015.

[16] The Applicant failed to prove to the General Division that he qualified for Employment Insurance benefits on January 18, 2015, given that he needed to accumulate 910 hours of insurable employment between January 19, 2014, and January 17, 2015, whereas he had accumulated only 557 hours.

[17] The Federal Court of Appeal states that an antedate request cannot be granted if the claimant does not qualify for Employment Insurance benefits on the earlier date - *Simard v. Canada (A.G.)*, 2001 FCA 270.

[18] For the reasons stated above, the Tribunal concludes that the appeal has no reasonable chance of success.

CONCLUSION

[19] Leave to appeal is refused.

Pierre Lafontaine

Member, Appeal Division