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

Citation: *F. W. v. Canada Employment Insurance Commission*, 2016 SSTADEI 579

Tribunal File Number: AD-16-1364

BETWEEN:

F. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 20, 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 November 9, 2016, the General Division of the Tribunal determined that the Applicant failed to meet the onus placed upon her to demonstrate good cause for the entire period of the delay in making the initial claim for benefits pursuant to section 10(4) of the *Employment Insurance Act* (*Act*).

[3] The Applicant requested leave to appeal to the Appeal Division on December 1, 2016.

ISSUE

[4] The Tribunal must decide if the appeal has a reasonable chance of success.

THE LAW

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (the "*DESD Act")*, "an 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 *DESD Act* provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

ANALYSIS

[7] 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.

[8] In regards to the application for permission to appeal, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[9] The Applicant, in her leave to appeal application, argues that she was not told by her HR manager to apply immediately, contrary to the conclusions of the General Division, but that she was rather told that "the 4 weeks deadline is a general clause for everybody. There shouldn't be a deadline; it's your employment benefit". She trusted what the HR manager told her. She continuously looked for work from July to December 2015. She did not know about Service Canada and did not pay attention to the 1-800 telephone number. She thought it would be easier to get all the information from the HR manager since they should know everything about employment related issues.

[10] When it dismissed the appeal, the General Division stated the following:

> [27] The Tribunal finds that if she had the time to apply for these jobs, she ought to have had time to apply for benefits in a timely manner. While there may have been some occasions on which she had to resolve behavioural issues, or medical issues regarding her son, this did not occur daily. The Appellant ought to have been able to find the time to complete an initial claim for benefits much earlier than December.
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> [28] The Appellant read the information on the back of the ROE. She went to her former employer and spoke with a HR employee there about benefits. Even if she was not aware of employment insurance benefits when she was first laid off, the Appellant had the opportunity and knowledge to pursue a claim for benefits in

> August and then further information was provided to her in September. The Tribunal finds that the Appellant did not act upon this information in a timely manner.
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> [29] The Courts have rules that ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause for the delay. In this instance, the Appellant may have been ignorant of the correct procedures to follow at the time of her termination, but she advised that she had read the instructions provided on the back of the ROE which she was sent, and she spoke with her former employer's HR Department personnel, in September, regarding the procedures to follow. However, the Appellant chose not to act upon the advice she was given and did not apply for benefits until December.
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> [30] The Tribunal finds that the Appellant did not act as a reasonable person in following up, in a timely manner, regarding the information she had been given with respect to applying for benefits.
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> [31] The Tribunal finds that the appellant has not shown good cause, each and every day for the delay in applying for benefits.

[11] The Applicant is basically asking this Tribunal to re-evaluate and reweigh the evidence that was put before the General Division which is the province of the trier of fact and not of an appeal court. It is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision of the General Division.

[12] When considering in its entirety the evidence submitted to the General Division, the Tribunal cannot find that the General Division erred when it concluded that the Applicant did not act as a reasonable and prudent person would have done in the same situation to satisfy herself of her rights and obligations and taken the steps required to protect her claim for benefits under the *Act*.

[13] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Applicant in support of her request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division