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

Citation: *V. D. v. Canada Employment Insurance Commission,* 2017 SSTADEI 75

Tribunal File Number: AD-15-1086

BETWEEN:

V. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Mark Borer

Date of Decision: February 27, 2017

Canada

REASONS AND DECISION

[1] Previously, a member of the General Division dismissed the Applicant's appeal. In due course, the Applicant filed an application requesting leave to appeal to the Appeal Division.

[2] Subsection 58(1) of the *Department of Employment and Social Development Act* states that 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.

[3] The Act also states that leave to appeal is to be refused if the appeal has "no reasonable chance of success".

[4] This is not an ordinary file.

[5] The Applicant in this matter was a member of a large and extremely complex group appeal. I issued a decision in that matter in 2014 (the 2014 decision) which, on consent, resolved the main legal points in dispute and established a special regime for dealing with any remaining outstanding issues. This special regime included generous timelines to request a reconsideration from the Commission, but specifically excluded any challenge to the agreed-upon resolution of the main legal issues.

[6] I note that out of approximately 2400 initial appellants who were given access to this special regime, only four (4) have requested leave to appeal to the Appeal Division.

[7] Beyond the deadline set in the 2014 decision, the Applicant attempted to avail herself of the special regime. The Commission, noting the missed deadline, refused to

reconsider the Applicant's file. The General Division upheld that determination, substantially for the same reasons.

[8] The Applicant now submits to the Appeal Division that she was not made aware of the 2014 decision until she received a notice of debt from the Commission. This was well after the deadline set in the 2014 decision had passed. The Applicant also makes a number of submissions relating to the underlying merits of the appeal, including asking that her debt be reduced or forgiven.

[9] The Commission, for their part, supports the General Division decision. They submit that the General Division member had no choice but to rule as she did because the 2014 decision gave the Commission (and the General Division) no jurisdiction to do otherwise. They ask that leave to appeal be refused.

[10] Essentially, the Applicant is arguing that because neither her own counsel nor the Tribunal ever successfully communicated the 2014 decision to her, natural justice requires that she be granted an extension of time to request the reconsideration authorized by the 2014 decision.

[11] Because of the unique nature of the facts of this case, I find that the Applicant's arguments are not, on their face, doomed to fail.

[12] Although of course I make no substantive finding at this stage, it follows that this application raises legal arguments regarding the natural justice rights of the Applicant which have a reasonable chance of success. For that reason, I am prepared to grant leave to appeal to ensure that these rights have been fully respected by the Tribunal throughout the lengthy appeal process.

[13] I would remind the Applicant, however, that according to s. 112.1 of the

Employment Insurance Act I have no ability to write off or forgive her debt.

[14] I encourage the Applicant to concentrate her submissions on the issue at hand: whether or not she is entitled to have her case reconsidered by the Commission, given the provisions of the 2014 decision.

[15] Following the receipt of written submissions from the parties, I will determine if an oral hearing is necessary.

Mark Borer

Member, Appeal Division