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

[TRANSLATION]

Citation: *T. M. v. Canada Employment Insurance Commission*, 2017 SSTADEI 137

Tribunal File Number: AD-16-1015

BETWEEN:

T. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: March 21, 2017

DATE OF DECISION: April 3, 2017

Canada

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On July 11, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) found that the Appellant 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 Appellant's antedate request could not be accepted in accordance with subsection 10(4) of the Act.

[3] The Appellant is deemed to have filed an application for leave to appeal to the Appeal Division on August 8, 2016. Leave to appeal was granted on September 26, 2016.

FORM OF HEARING

[4] The Tribunal determined that the hearing of this appeal would be conducted by teleconference for the following reasons:

- The complexity of the issue or issues;
- The fact that the credibility of the parties is not a prevailing issue;
- The cost-effectiveness and expediency of the hearing choice;
- The need to proceed as informally and quickly as possible while complying with the rules of natural justice.

[5] The Appellant did not participate in the hearing but was represented by Gennamo Zaccaro. The Respondent also did not participate, despite having received a notice of hearing.

THE LAW

[6] 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.

ISSUE

[7] Did the Tribunal's General Division err when it found that the Appellant had not accumulated a sufficient number of hours of insurable employment to establish a claim for benefits under section 7 of the Act and that her antedate request could not be accepted in accordance with subsection 10(4) of the Act.

SUBMISSIONS

[8] The Appellant submitted the following arguments in support of her appeal:

- She did not stop working, but was dismissed, because her illness prevented her from meeting the objectives set by her employer.

- 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 if she is not entitled to sickness benefits, she should be entitled to regular benefits because she is only four (4) hours short.

- She argues that the 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.

- She wonders if it would be possible to extend her qualifying period to include a total of 570 hours. She explains that being hospitalized prevented her from working. She provided a detailed letter indicating her "complete inability to work," signed by her attending physician.

- She 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.

[9] The Respondent submitted the following arguments to refute the Appellant's appeal:

- In this case, if the application had been filed as requested on July 13, 2014, the Appellant would have had insufficient hours to establish a claim for sickness benefits. She required 600 hours to be eligible for sickness benefits or 910 hours to be eligible for regular benefits. She accumulated only 556 hours between July 13, 2013, and July 12, 2014.

- She submitted a medical note to the General Division showing that she had been hospitalized from November 23, 2012, to February 8, 2013, but this sickness period is outside the qualifying period. The medical note does not allow for the extension of the qualifying period because it references a sickness period that is outside the qualifying period.

- Even if the Appellant was submitting evidence of her incapacity to work between July 13, 2013, and July 12, 2014, and we extended the period to grant her the maximum of 52 weeks, she would still be ineligible because she has no record of employment from July 13, 2012, to July 13, 2013.

- Furthermore, to grant an antedate, she must meet both criteria. The first is that she must show that on the earlier date, she met the conditions required to receive benefits, which is not the case, and the second is that she must show that she had, throughout the period between the earlier date and the date on which she submitted her application, that there was good cause for the delay. She submitted her application 64 weeks late.

- Case law has established that, in order to establish good cause for a delay in applying for benefits, claimants must demonstrate that they have promptly taken steps to enquire as to their eligibility for benefits and that ignorance of the law or lack of experience with the Employment Insurance system will not constitute good cause for a delay in applying for benefits.

- The fact that she had been misinformed by her employer is not good cause for having submitted her application 64 weeks late, because she could have inquired with the Respondent.

- The General Division properly assessed the evidence and its decision is well-founded. It made no error in fact or in law in maintaining the Respondent's decision. It also did not act beyond or refuse to exercise its jurisdiction.

STANDARDS OF REVIEW

[10] The Appellant did not make any submissions regarding the applicable standard of review.

[11] The Respondent submits that the appropriate standard of review for questions of law is correctness, and that the appropriate standard of review for questions of mixed fact and law is reasonableness—*Pathmanathan v. Office of the Umpire*, 2015 FCA 50.

[12] The Tribunal notes that the Federal Court of Appeal in the case of *Canada (Attorney General) v. Jean*, 2015 FCA 242, indicates in paragraph 19 of its decision that "[w]hen it 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 indicated:

> Not 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 Court concluded that "[w]he[n] it 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 Tribunal's Appeal Division as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

[16] Therefore, 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 submitted an initial claim for regular Employment Insurance benefits on September 18, 2015.

[18] During the appeal hearing, it was understood that the Appellant worked for the following employers:

- Wendy's Restaurants of Canada from October 29, 2011, to February 5, 2012, and she accumulated 271 hours of insurable employment.
- Capital Traiteur Montréal from January 25, 2014, to January 25, 2014, and she accumulated 9 hours of insurable employment.
- Réseau GLP & Cie from February 27, 2014, to July 16, 2014, and she accumulated 547 hours of insurable employment.
- Groupe Service aux Immeubles Prestige from December 10, 2014, to December 12, 2014, and she accumulated 14 hours of insurable employment.

[19] The Appellant lives in the X region. The unemployment rate in this region is 9.1%.

[20] According to subsection 7(2) of the Act, the Appellant must have acquired, in her qualifying period, at least the number of hours of insurable employment set out in the table provided in the Act, in relation to the regional rate of unemployment that applies.

[21] According to paragraph 8(1)(*a*) of the Act, the qualifying period of an insured person is the 52-week period immediately before the beginning of a benefit period, in this case, from September 14, 2014, to September 12, 2015. However, the Appellant had only accumulated 14 hours of insurable employment during this period, whereas she needed 560 hours of insurable employment to be eligible for regular benefits and 600 hours for sickness benefits.

[22] If we consider the application to have been filed on July 13, 2014, the Appellant still has insufficient hours to establish a claim for benefits. She needs 600 hours to be eligible for sickness benefits or 910 hours for regular benefits. She accumulated only 556 hours in the qualifying period from July 13, 2013, to July 12, 2014.

[23] Even if the Tribunal accepted proof of incapacity to work between July 13, 2013, and July 12, 2014, and extended the period to 52 weeks, which is the maximum provided by the Act, the Appellant would still be ineligible because she had no record of employment between July 13, 2012, and July 13, 2013.

[24] The Appellant argues that the 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.

[25] It should be reiterated that the Tribunal does not have the authority to determine the number of hours of insurable employment. The onus is on the Canada Revenue Agency (CRA) to do that. Paragraph 90(1)(*d*) of the Act clearly states that only an officer of the CRA authorized by the Minister can make a ruling on how many hours an insured person has had in insurable employment.

[26] As mentioned by the General Division, the Act does not allow any discrepancy and gives the Tribunal no discretion to allow the Appellant to meet the conditions required—*Canada (Attorney General) v. Lévesque*, 2001 FCA 304.

[27] For the above reasons, the appeal is dismissed.

CONCLUSION

[28] The appeal is dismissed.

Pierre Lafontaine

Member, Appeal Division