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

Citation: *M. M. v. Canada Employment Insurance Commission,* 2017 SSTADEI 180

Tribunal File Number: AD-17-204

BETWEEN:

M. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 2, 2017

Canada

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On December 18, 2016, the Tribunal's General Division concluded the following:

- An indefinite disqualification was to be imposed pursuant to sections 29 and 30 of the *Employment Insurance Act* (Act) because the Applicant voluntarily left his employment without just cause.
- A penalty should be imposed pursuant to section 38 of the Act for making a misrepresentation by knowingly providing false or misleading information to the Respondent.
- A notice of violation was to be issued pursuant to section 7.1 of the Act.

[3] The Applicant is presumed to have requested leave to appeal to the Appeal Division on March 7, 2007, after receiving the General Division's decision on January 2, 2017.

ISSUES

[4] The Tribunal must decide whether it will allow the late appeal and whether 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* (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 "[l]eave 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] Regarding the late application for permission to appeal, the Applicant states that he only received the appeal documents on February 15, 2017. The Tribunal finds, in the present circumstances, that it is in the interest of justice to grant the Applicant's request for an extension of time to file his application for permission to appeal without prejudice to the Respondent—*X (Re)*, 2014 FCA 249, *Grewal v. Canada (Minister of Employment and Immigration)*, [1985] 2 F.C. 263 (F.C.A.).

[9] Regarding the application for leave 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.

[10] The Applicant, in his application for leave, states that if the employer had been present at the hearing, his line of questioning would have shown that its version of events was incorrect. He argues that in the absence of the employer, his testimony should have been given more weight. He wants the Respondent to drop the penalty imposed on him.

[11] On March 17, 2017, the Tribunal sent a letter to the Applicant requesting that he explain why his application was late and to fully detail his grounds of appeal. He was also advised that repeating his version of events before the General Division was insufficient. On April 10, 2017, the Applicant replied to the Tribunal.

[12] In his reply, the Applicant states that the main issue is that he has been accused of knowingly making a false statement when he honestly believed he was on call. He argues that he was never told that they did not accept his raise request. He was rather told that the employer was not sure whether he would spend his notice at home or on the boat. The employer never called him back.

[13] 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 General Division's decision.

[14] Furthermore, there was no reason for the General Division to dismiss the employer's evidence on the sole basis of the Applicant's argument that he had no opportunity to cross-examine the employer—*Canada (Attorney General) v. Olivier*, A-308-81. The General Division, as the trier of fact, was at liberty to prefer the credibility of one party over the other, present or not.

[15] The Applicant was also aware of the employer's evidence prior to appearing before the General Division, and had ample time to prepare his defence. The General Division allowed him to present his arguments in respect of the entire case before it, and the Applicant had an opportunity to dispute the employer's position.

[16] Unfortunately for the Applicant, he has not identified any failure by the General Division to observe a principle of natural justice, nor any errors of jurisdiction or law, or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

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

CONCLUSION

[18] The application for leave is refused.

Pierre Lafontaine

Member, Appeal Division