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

Citation: *H. H. v. Canada Employment Insurance Commission,* 2017 SSTADEI 205

Tribunal File Number: AD-17-388

BETWEEN:

H. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: May 17, 2017

Canada

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On April 27, 2017, the Tribunal's General Division determined that the Applicant failed to meet the onus placed upon him to demonstrate good cause for the entire period of the delay pursuant to section 10(4) of the *Employment Insurance Act* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on May 10, 2017.

ISSUE

[4] The Tribunal must decide 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] In his leave to appeal application, the Applicant submitted that the Respondent, as a public servant agency, cannot gain a profit or take advantage of the other party's mistakes or lack of knowledge of the process. He stated that if a provision is ambiguous, it must be construed against the party that has drafted the provision. He pleaded that there is no clear definition within the Act or the *Employment Insurance Regulations* for the term "good cause" and that this leaves the door open to the Respondent's own interpretation of what constitutes good cause.

[9] The Applicant also submitted that the General Division made factual errors regarding his job offer. He stated that the General Division erred in concluding that he did not file an application for benefits without getting his Record of Employment (ROE). He rather stated that he could not receive benefit payments without a ROE. Finally, he stated that it is not fair to deny a claim without considering the merit of the claim.

[10] The General Division found that the Applicant's claim for Employment Insurance benefits could not start on November 18, 2015, because he did not prove that between November 22, 2015, and January 30, 2016, he had good cause to apply late for benefits.

[11] The Applicant acknowledged before the General Division that he did not apply sooner because he did not know about the Employment Insurance claim process and that the late application was his mistake (GD3-20). He delayed his application because, on a previous claim, he had to wait 10 weeks before receiving benefits. He applied when a friend who worked with him, and who was laid off around the same time, applied as soon as he was laid off and he started receiving money right away (GD3-22). He did not apply sooner because he did not receive his ROE from his employer until January 15, 2016, and he was actively looking for work during the relevant period (GD2-7).

[12] The General Division found that the Applicant's reasons for the delay demonstrated that he made incorrect assumptions about the benefit application process, and did not seek to clarify or confirm his understanding with the Respondent. The General Division found that the Applicant's reasons for the delay in making his claim did not amount to "good cause" for the delay under subsection 10(4) of the Act.

[13] When a claimant has failed to file their claim in a timely manner and their ignorance of the law is ultimately the reason for their failure to do so, they ought to be able to satisfy the requirement of having "good cause"; they need to be able to show that they did what a reasonable person in their situation would have done to satisfy themselves as to their rights and obligations under the Act – *Canada (Attorney General) v. Albrecht*, A-172-85; *Canada (Attorney General) v. Carry*, 2005 FCA 367; *Canada (Attorney General) v. Beaudin*, 2005 FCA 123; *Canada (Attorney General) v. Somwaru*, 2010 FCA 336.

[14] A prospective claimant in the Applicant's position is expected to take reasonably prompt steps to understand their rights and obligations under the Act. As part of this requirement, the Applicant was expected to make reasonable enquiries to verify his assumptions. An obvious place to enquire would have been with the Respondent – *Canada (Attorney General) v. Innes*, 20110 FCA 341; *Canada (Attorney General) v. Thrinh*, 2010 FCA 335.

[15] Jurisprudence has consistently held that a delay in applying for benefits based on the expectation of finding employment does not constitute good cause for the purposes of subsection 10(4) of the Act. Unfortunately, waiting to find work rather than immediately applying for benefits, while laudable, does not provide good cause for delay as required by the legislation – *Howard v. Canada (Attorney General)*, 2011 FCA 116.

[16] The fact that the Applicant had not received his ROE from his employer has also been found not to constitute good cause for a delay in submitting an application for benefits.

[17] After reviewing the appeal docket and the General Division 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. The Applicant has not set

out a reason that falls into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[18] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division