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

Citation: *R. G. v. Canada Employment Insurance Commission,* 2017 SSTADEI 229

Tribunal File Number: AD-17-352

BETWEEN:

R. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: June 12, 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 October 31, 2016, the Tribunal's General Division concluded in file GE-16-652 that a disentitlement would be imposed pursuant to section 37 of the *Employment Insurance Act* (Act) and section 55 of the *Employment Insurance Regulations* (Regulations) because the Applicant was absent from Canada, and a disentitlement would be imposed pursuant to paragraph 18(*a*) of the Act for failing to prove his availability for work.

[3] The Applicant filed an application with the General Division to amend or rescind the original decision and this first application was made within a year of the General Division decision being communicated to the party.

[4] On March 21, 2017, the Tribunal's General Division determined that there were no grounds or basis that would allow it to rescind or amend its original decision.

[5] The Applicant requested leave to appeal to the Appeal Division on April 26, 2017, after receiving communication of the General Division decision on March 30, 2017.

ISSUE

[6] The Tribunal must decide whether the appeal has a reasonable chance of success.

APPLICABLE LAW

[7] 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."

[8] 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

[9] 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.

[10] 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 to appeal can be granted.

[11] The Applicant submits, in support of his application for leave to appeal, that he had to make the agonizing trip to Iran to find relief for his pain and suffering without going through the recommended surgery in Canada. Despite the heavy, physical, emotional and financial burden on his family, he has found relief from his suffering. He would like the Tribunal to re-evaluate his case.

[12] A letter was sent to the Applicant dated April 28, 2017, requesting that he explain in detail why he was appealing the General Division decision on the refusal to rescind or amend.

[13] In his response to the Tribunal, the Applicant stated that the General Division did not consider his physician and physical therapist's recommendations and/or the medical

documents that he had previously submitted. He asked the Tribunal to reconsider his appeal in light of the medical documents that he had previously provided.

[14] The General Division found that there was no basis under section 66 of the DESD Act to allow the General Division to rescind or amend the original decision.

[15] Section 66 of the DESD Act states the following:

> "Amendment of decision
>
> 66 (1) The Tribunal may rescind or amend a decision given by it in respect of any particular application if
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> (a) in the case of a decision relating to the Employment Insurance Act, new facts are presented to the Tribunal or the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact […]."

[16] The Federal Court of Appeal has previously articulated the test for "new facts" in *Canada (Attorney General) v. Chan*, (1994) F.C.J. no 1916 (C.A.), and it was recently confirmed in *Canada (Attorney General) v. Hines*, 2011 FCA 252:

> "[14] The test for determining whether "new facts" exist within the meaning of this provision has long been established. It was reiterated in *Canada (Attorney General) v. Chan*, [1994] F.C.J. no 1916, where Décary J.A., referring to the statutory predecessor to section 120 which bears essentially the same language, said (para. 10):
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> … "New facts", for the purpose of the reconsideration of a decision of an umpire sought pursuant to section 86 of the Act, are facts that either happened after the decision was rendered or had happened prior to the decision but could not have been discovered by a claimant acting diligently and in both cases the facts alleged must have been decisive of the issue put to the umpire."

[17] In the present case, the medical evidence was available as of 2015 and could have been discovered prior to the General Division decision rendered on October 31, 2016. Therefore, it cannot be considered "new facts."

[18] Furthermore, as the General Division has stated, these documents do not provide any new or additional information to support that treatment was unavailable in Canada as per the requirements of paragraph 55(1)(*a*) of the Regulations. The General Division's original

decision was not made without knowledge of, or not based on a mistake as to, some material fact.

[19] After reviewing the appeal docket, the General Division's rescind or amend decision and 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 reasons that fall into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

[20] The Tribunal refuses leave to appeal to the Tribunal's Appeal Division.

Pierre Lafontaine

Member, Appeal Division