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

Citation: *A. S. v. Canada Employment Insurance Commission,* 2017 SSTADEI 258

Tribunal File Number: AD-17-378

BETWEEN:

A. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 6, 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 March 2, 2017, the Tribunal's General Division determined that:

- The Respondent had exercised its discretion in a judicial manner in denying the Applicant's request to extend the 30-day period to request reconsideration of a decision under section 112 of the *Employment Insurance Act* (Act) and under section 1 of the *Reconsideration Request Regulations* (Reconsideration Regulations).

[3] The Applicant is deemed to have requested leave to appeal to the Appeal Division on May 8, 2017, after having received the General Division decision on March 30, 2017.

ISSUES

[4] The Tribunal must decide whether it will allow the late application 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 leave to appeal, the Tribunal notes that the Applicant's appeal was deemed filed on May 8, 2017. The Applicant explains the eight- day delay in filing his appeal by the fact that he had been ill and that he had had a motor vehicle accident. 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 leave to appeal without prejudice to the Respondent—*X (Re)*, 2014 FCA 249; *Grewal*

c. Minister of Employment and Immigration, [1985] 2 F.C. 263 (F.C.A.).

[9] Regarding the application for leave to appeal, before leave to appeal can be granted, 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.

[10] The Respondent considered that the Applicant had confirmed receipt of the Respondent's decision dated March 15, 2005, and that he had delayed making a request for reconsideration until August 10, 2016.

[11] The Applicant, in his application for leave to appeal, states that the 2005 overpayment was a clerical error that he had tried three times to correct with Service Canada

over the past 11 years. He is currently facing financial hardship, and he needs to have the 2005 overpayment returned to him.

[12] The Tribunal sent a letter to the Applicant dated May 19, 2017, requesting that he explain in detail his grounds of appeal. The Applicant replied to the Tribunal on June 9, 2017.

[13] The Applicant, in his reply to the Tribunal, stated the following:

> Here are the three reasons under the different law quoted below, under section 44 subsection 158(b) is nullified reference to the laws quoted below for over payment and refund, under federal law EI pension is not to be deducted until the person or persons have attained the age of retirement federal offence if the pension was used toward the EI payments in 2004 to 2005, proof of hardship provided, the mistake of the clerical officer at EI was quoted but still denial by the government, clerical error quoted of the employer that they do that quoting less hours for the purpose of Tax evasion , should looked up by revenue Canada and employer charged because the stubs are actuals and ROE FRAUD by the employer, under statutes of limitation of federal law documents can be produce not for 7 or 10 years but life time, that does not bar my case, white paper available by the government at all time, The last appeal decision by the adjudicator was biased racist and non-compliant with the federal laws, comes under the Human Right laws as biased towards a [*sic*] Immigrant,(violation) CPP taken way(violation) decision denied for 12 years (violation) under federal law and the Constitution which override any laws or amendment to this effect.

[14] The Applicant did not submit a request for reconsideration until August 10, 2016, which is more than eleven years after the decision of March 15, 2005. The Respondent's records of communication with the Applicant in May 2005 and June 2005 show that the Applicant was aware of the decision shortly after it had been made.

[15] The General Division, after reviewing the Applicant's evidence, determined that the Respondent had properly exercised its discretion under section 112 of the Act and the Reconsideration Regulations when it had determined that the Applicant did not have a reasonable explanation for the delay in making the request for reconsideration, that he had not demonstrated a continuing intention to request reconsideration, that he did not have a

reasonable chance of success and that prejudice would be caused to the Respondent should the extension be granted.

[16] The General Division determined that the Respondent had given sufficient weight to all relevant factors, that it had not proceeded on a wrong principle of law, that it had not erroneously misapprehended the facts and that no obvious injustice would result in refusing the extension of time.

[17] In his application for leave to appeal, the Applicant has not identified any errors of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified any errors in law nor has he identified 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 the decision that the Respondent had acted in a judicial manner when it refused to extend the 30-day period. Furthermore, the Applicant's complaints are outside the jurisdiction of this Tribunal.

[18] The Tribunal notes that the Applicant, in his grounds of appeal, made serious allegations against the General Division member. The Tribunal finds that there is no material evidence whatsoever demonstrating conduct from the General Division member that derogates from the standard. The Tribunal reiterates that such an allegation should be made with great caution and that it cannot rest on an applicant's mere suspicion, pure conjecture, insinuations or mere impressions—*Arthur v. Canada (Attorney General)*, 2001 FCA 223.

[19] For the above-mentioned reasons and after reviewing the appeal docket, 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.

CONCLUSION

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

Pierre Lafontaine

Member, Appeal Division