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

Citation: *R. B. v. Canada Employment Insurance Commission*, 2017 SSTADEI 327

Tribunal File Number: AD-17-77

BETWEEN:

R. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

HEARD ON: August 31, 2017

DATE OF DECISION: September 5, 2017

Canada

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] On January 4, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) found that the Respondent had exercised its discretion in a judicial manner in refusing the Appellant's request to extend the 30-day period to make a Request for Reconsideration of a decision under section 112 of the *Employment Insurance Act* (Act) and section 1 of the *Reconsideration Request Regulations*.

[3] The Appellant requested leave to appeal to the Appeal Division on January 27, 2017. Leave to appeal was granted on March 14, 2017.

TYPE OF HEARING

[4] The Tribunal held a teleconference hearing for the following reasons:

- the complexity of the issue under appeal
- the fact that the parties' credibility was not anticipated to be a prevailing issue
- the information in the file, including the need for additional information
- the requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness and natural justice permit

[5] The Appellant and his representative, R. B., attended the hearing. Elena Kitova represented the Respondent.

THE LAW

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (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.

ISSUE

[7] The Tribunal must decide whether the General Division erred when it concluded that the Respondent had correctly refused to extend the 30-day period to request a reconsideration of a decision under section 112 of the Act.

SUBMISSIONS

[8] The Appellant submits the following arguments in support of his appeal:

- He did not voluntarily quit his employment.
- His employer terminated his employment while he was on a doctor-approved sick leave.
- The employer illegally issued a Record of Employment (ROE) stating that the Appellant had quit his job after three days of absence. The employer's actions were in direct violation of the *Canada Labour Code* and the *B.C. Employment Standards Act*.

- The Respondent made a unilateral decision to ignore the Appellant's claim for regular benefits without investigating the conduct of the employer who had issued the ROE, and it proceeded with the claim for sickness benefits— choosing the cheaper of the two solutions.;

- He felt that, with the lack of investigation by the Respondent and the employer's refusal to change the ROE, he was stonewalled, and that filing a request for reconsideration would not change anything.

- Hiding behind failures to meet administrative deadlines while laws are broken, costing a claimant all that he or she has worked for, says a lot about the morals of a government organization.

[9] The Respondent submits the following arguments against the appeal:

- The General Division did not err in fact and in law when it rendered its decision.

- The Federal Court has confirmed the principle that the Respondent's discretionary decisions should not be disturbed unless the Respondent failed to exercise its discretion in a judicial manner.

- The General Division, as outlined in its analysis and findings, has determined that the Respondent acted in a judicial manner in refusing the Appellant's request for reconsideration.

- The Appellant was aware of the decision in April 2015 but chose not to file a timely request for reconsideration, and he has failed to demonstrate special reasons for the nine-month delay in submitting a request for reconsideration. The Respondent maintains that it exercised its discretion in a judicial manner when the Appellant's request to extend the 30-day reconsideration period had been refused.

STANDARD OF REVIEW

[10] The Appellant did not submit any arguments related to the applicable standard of review.

[11] The Respondent submits that the Appeal Division does not owe any deference to the General Division's conclusions with respect to questions of law, regardless of whether the error appears on the face of the record. However, for questions of mixed fact and law, as well as for questions of fact, the Appeal Division must show deference to the General Division. It can intervene only if 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—*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 when the Appeal Division "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 indicates that:

> [n]ot 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 Federal Court of Appeal concludes that when the Appeal Division "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 Appeal Division of the Social Security Tribunal as described in *Jean* was later confirmed by the Federal Court of Appeal in *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

[16] In accordance with the above instructions, 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 had 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 vigorously disagrees with the Respondent's decision dated April 11, 2015, denying him regular benefits on the basis that he had voluntarily left his employment with Reidco Metal Industries without just cause. He argues that the employer wrongfully stated in his ROE that he had quit his job while he was on a doctor-approved sick leave. He states that the employer, by its actions, violated the *Canada Labour Code* and the *B.C. Employment Standards Act*.

[18] The Tribunal explained to the Appellant during the appeal hearing that the only issue before it was whether the General Division had erred when it concluded that the Respondent had correctly refused to extend the 30-day period to request a reconsideration of a decision under section 112 of the Act.

[19] The Respondent issued to the Appellant a notice of disqualification dated April 11, 2015 (GD3-13). He acknowledged in his request for reconsideration filed on January 21, 2016, that he had been made verbally aware of the decision of the Respondent on April 14, 2015 (GD3-30). The Appellant waited 252 days (9 months) to request reconsideration. Despite the Respondent's attempts to contact the Appellant, he provided no further information regarding the reasons for his delay to file a request for (GD3-46).

[20] As stated by the General Division, the legislation has given the Respondent the discretionary power to extend the 30-day period to request a reconsideration of a decision under section 112 of the Act.

[21] In order for the Appellant to succeed in his present appeal, he must show that the General Division erred when it concluded that the Respondent properly exercised its discretion to deny the extension of time.

[22] The Respondent considered that the Appellant was aware of the decision rendered in April 2015 and, yet, he continued to delay filing his appeal/reconsideration request for nine months. In the Respondent's letter dated April 11, 2015, the Appellant was clearly informed that, if he disagreed with the decision, he had 30 days following the receipt of the notice (or from the date he was verbally notified) to make a formal request for reconsideration to the Respondent. The letter also included a telephone number and the Respondent's website for the Appellant to access if he wanted additional information on how to request a reconsideration of the Respondent's decision (GD3-13 to GD3-14).

[23] The Appellant argues before the Tribunal that, because of the lack of investigation by the Respondent and the employer's refusal to change the ROE, he felt that he was stonewalled and that filing a request for reconsideration would not have changed anything. He states that hiding behind failures to meet administrative deadlines, while laws are broken, has caused him great prejudice.

[24] The Appellant has not convinced the Tribunal that the General Division erred when it concluded that the Respondent had properly exercised its discretion to deny the extension of time. The Respondent considered that the Appellant had chosen not to file a timely request for reconsideration and that he had failed to demonstrate a reasonable explanation for the delay.

[25] For the above-mentioned reasons, the Tribunal finds that the General Division did not err when it concluded that the Respondent had exercised its discretion properly in the present case. The Respondent gave sufficient weight to all relevant factors, did not proceed on a wrong principle of law and did not erroneously misapprehend the facts**.**

CONCLUSION

[26] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division