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

Citation: H. G. v. Canada Employment Insurance Commission, 2017 SSTADEI 341

Tribunal File Number: AD-17-500

BETWEEN:

H. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 19, 2017

Canada

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On June 20, 2017, the Tribunal's General Division refused an extension of time for the Applicant to appeal to the Tribunal's General Division.

[3] The Applicant requested leave to appeal to the Appeal Division on July 7, 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] Before granting 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.

[9] The Applicant disputes the number of insurable hours that his employer has attributed. He submits that the General Division neglected to give due consideration to the fact that the Canada Revenue Agency (CRA) has not issued a ruling on the issue of insurability in support of his request for reconsideration. He filed a letter from the Respondent dated November 18, 2016, that states that "[a] decision on your Request for Reconsideration will be deferred until we receive a ruling from the CRA on the issue of insurability." As such, he submits that this serves as a ground of appeal.

[10] The law confers upon the General Division the discretionary power to extend the time for appeal.

[11] The General Division concluded that although the Applicant met three of the four factors established in *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883, more weight was to be given to the fact that he had not presented an arguable case on appeal. The General Division determined that allowing an extension of time was not in the interest of justice because it lacked the jurisdiction to hear appeals on CRA insurability rulings, and the General Division could not ignore, refashion, circumvent or rewrite the eligibility requirements set out in section 7 of the *Employment Insurance Act* (Act).

[12] For the appeal to be allowed, the Applicant would need to demonstrate that the General Division inappropriately exercised its discretionary power when it refused to grant an extension of time. An improper exercise of discretion occurs when a member gives

insufficient weight to relevant factors, proceeds on a wrong principle of law, erroneously misapprehends the facts or when an obvious injustice would result.

[13] On November 14, 2016, the CRA established that the Applicant's insurable hours were 660 for the period under review. The Applicant was clearly advised that if he did not agree with this ruling, he had 90 days from the date of his letter to file an appeal to the Chief of Appeals for the CPP/EI Rulings Division (Page GD3-24).

[14] The Tribunal sent a letter to the Applicant dated August 28, 2017, asking him whether he had filed an appeal of the CRA ruling dated November 14, 2016 (GD3-24, GD3-25), with the CRA Chief of Appeals and, in case he had done so, to forward to the Tribunal documentary proof of the appeal by September 22, 2017 at the latest. The Applicant replied to the Tribunal on September 11, 2017.

[15] In his reply, the Applicant stated that he had not filed an appeal of the CRA ruling dated November 14, 2016. He submitted that the Respondent had the onus of getting back to him with a decision following the Respondent's decision on his request for reconsideration (AD1D-1).

[16] It is well-established in jurisprudence that the CRA has exclusive jurisdiction to make a determination on how many hours of insurable employment a claimant possesses for the purposes of the Act—*Canada (Attorney General) v. Romano*, 2008 FCA 117; *Canada (Attorney General) v. Didiodato*, 2002 FCA 345; *Canada (Attorney General) v. Haberman*, 2000 CanLII 15802 (FCA).

[17] If the Applicant was dissatisfied with the CRA ruling rendered on November 14, 2016, he had to follow the appeal process mentioned in the CRA decision, rather than following the Tribunal's appeal process, since the Tribunal has no jurisdiction in such matters.

[18] According to subsection 7(2) of the Act, the minimum requirement for the claimant to qualify to receive Employment Insurance benefits was 700 hours based on the unemployment rate of 5.3% in the region where he resided. However, the evidence showed

that the Applicant had accumulated only 660 hours of insurable employment in his qualifying period.

[19] Unfortunately, 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 errors in law, nor has he identified any erroneous findings of fact that the General Division, in coming to its decision to deny the Applicant the extension of time to appeal to the General Division, may have made in a perverse or capricious manner or without regard for the material before it.

[20] After reviewing the appeal docket, examining 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. 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

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

Pierre Lafontaine

Member, Appeal Division