



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. C. v. Canada Employment Insurance Commission*, 2017 SSTADEI 362

Tribunal File Number: AD-16-1184

BETWEEN:

D. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: October 19, 2017

REASONS AND DECISION

INTRODUCTION

[1] On September 6, 2016, the General Division of the Social Security Tribunal of Canada (the “General Division”) determined that the Applicant voluntarily left his employment on June 27, 2015, and that he did not have just cause to do so. As a result, he was disqualified from benefits under the *Employment Insurance Act*. The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on September 27, 2016.

ISSUE

[2] The Member must decide whether the appeal has a reasonable chance of success.

THE LAW

[3] 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.

[4] According to subsections 56(1) and 58(3) of the DESD Act, an appeal to the Appeal Division may be brought only if leave to appeal is granted and the Appeal Division must either grant or refuse leave to appeal.

[5] Subsection 58(2) of the DESD Act provides that leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

SUBMISSIONS

[6] The Applicant submits that the General Division made an important error regarding the facts. He claims that he “had an open file with the U.I.” (AD1E-4), and that he intended his application for benefits to use his existing claim; not start a new one (AD1-5). The decision dealt only with whether he had been disqualified from benefits under a new claim, by reason of his voluntary leaving said to be without just cause.

ANALYSIS

[7] In his application for reconsideration, the Applicant disputed his voluntary leaving and characterized his request for reconsideration as an authorized leave of absence. The Applicant’s reasons for requesting a reconsideration did not address his entitlement to unused benefits from a prior claim and from any remaining benefit period of that prior claim.

[8] The Applicant admits that he forget to mention this at the General Division hearing (AD1-6).

[9] However, the initial October 23, 2015, decision of the Commission references the prior claim implicitly, stating that: “[w]e have *reactivated* your claim for Employment Insurance benefits starting September 27, 2015.” The decision continues on to specify that “[b]enefits are refused from this date only.”

[10] It is possible to infer that, when the Commission made the initial October 23, 2015, decision, which was later reconsidered in the decision of December 7, 2015, before the General Division, the Commission had in view the earlier claim and benefits, which might still be payable in respect of some period prior to September 27, 2015.

[11] The Applicant believes that he is still entitled to access unclaimed benefits within the prior claim’s unexpired benefit period (at that time). If he can establish that this issue was before the General Division, this may lead to a finding that the General Division failed to exercise its discretion per paragraph 58(1)(a) of the DESD Act.

[12] The Applicant therefore has a reasonable chance of success.

CONCLUSION

[13] The Application is granted.

[14] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Stephen Bergen
Member, Appeal Division