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

Citation: *G. T. v Canada Employment Insurance Commission*, 2017 SSTGDEI 130

Tribunal File Number: GE-17-1360

BETWEEN:

G. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

DATE OF DECISION: October 13, 2017

Canada

REASONS AND DECISION

OVERVIEW

[1] On January 31, 2017, the Appellant made an initial claim for regular Employment Insurance (EI) benefits. On February 10, 2017, the Respondent informed the Appellant that they were not able to pay her EI benefits because she had zero hours of insurable employment in her qualifying period and she requires 525 insurable hours to qualify for EI benefits.

[2] The Respondent received the Appellant's Request for Reconsideration on February 17, 2017, in which the Appellant states she does not agree with the determination that she has zero hours of insurable employment and that the Respondent erred in fact, law, and/or a mix of fact and law.

[3] On April 7, 2017, the Appellant was advised that the Respondent was maintaining their initial decision that they cannot pay her EI benefits because she has zero hours of insurable employment in her qualifying period. The Appellant submitted a Notice of Appeal to the Social Security Tribunal (Tribunal) on April 10, 2017, stating that she believes she is entitled to receive more EI benefits because of all of the years she has spent working non-stop and because of the same reasons she submitted with her reconsideration request.

[4] The Tribunal must decide whether to summarily dismiss this appeal based on whether the appeal has no reasonable chance of success.

PRELIMINARY ISSUE

[5] Before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions, pursuant to section 22 of the *Social Security Tribunal Regulations* (Regulations).

[6] By written correspondence dated August 29, 2017, the Tribunal notified the Appellant of its intent to summarily dismiss her Appeal and requested a detailed written submission, explaining why her appeal has a reasonable chance of success. The Tribunal received the Appellant's written submission on September 28, 2017.

[7] The Tribunal finds that the Appellant's appeal has no reasonable chance of success. Therefore, the appeal is summarily dismissed. The reasons for this decision follow.

EVIDENCE

[8] The Appellant made an initial claim for regular EI benefits on January 31, 2017, stating her last day worked with R.C. was October 16, 2015.

[9] The employer, R.C., issued a Record of Employment (ROE) stating the Appellant's first day worked was March 17, 2012; her last day paid was October 16, 2015; she had 1893 hours of insurable employment; and the reason for separation was dismissal.

[10] The Respondent submitted evidence that the Appellant had established a previous benefit period as of October 25, 2015, based on her separation from her employment with R.C. The Respondent had determined that the Appellant had 1893 hours of insurable employment in her qualifying period, and that she was entitled to 38 weeks of regular EI benefits. Then due to amendments to the *Employment Insurance Act* (EI Act) as a result of Bill C-15, the Appellant was entitled to an additional 25 weeks of regular EI benefits for a total of 63 weeks of regular EI benefits. The Appellant was paid the full 63 weeks of EI benefits ending on January 21, 2017.

[11] In relation to her initial claim made on January 31, 2017, the Respondent submitted evidence that based on the Appellant's address listed on her initial claim she resides in an area that had an unemployment rate of 10.5% which requires 525 hours of insurable employment to qualify for regular EI benefits.

[12] On February 10, 2017, the Respondent advised the Appellant, in writing, that they were unable to pay her regular EI benefits because she had zero hours of insurable employment in her qualifying period. The Respondent determined that in order to qualify for EI benefits the Appellant requires 525 hours of insurable hours in her qualifying period, which they determined to be from January 24, 2016, to January 21, 2017.

[13] On February 17, 2017, the Respondent received the Appellant's Request for Reconsideration. The Appellant argued that she believes she should receive more EI benefits and that the Respondent erred in fact, law, and/or a mix of fact and law.

[14] On March 16, 2017, the Respondent advised the Appellant that she requires 525 hours of insurable employment in her qualifying period from January 24, 2016, to January 21, 2017, to be able to establish a benefit period. As the Appellant has not worked since October 16, 2015, she has zero hours of insurable employment in her qualifying period and cannot establish a benefit period. Therefore, she cannot be paid regular EI benefits.

[15] On March 16, 2017, the Respondent advised the Appellant that after conducting an in-depth review of the circumstances of her initial claim they were maintaining their initial decision that she did not have enough hours of insurable employment in her qualifying period to be paid regular EI benefits.

[16] On April 10, 2017, the Tribunal received the Appellant's Notice of Appeal in which she argues that she believes the Respondent erred in fact, law and/or a mix of fact and law. She further states that: she believes she is entitled to receive more EI benefits considering all of the years she has spent working non-stop; she wishes to adopt all previous grounds and reasons initially made in her reconsideration request in the context of this appeal; and other concerns, grounds and reasons exist or may exist and she reserves and preserves her rights.

[17] As stated above, the Appellant was notified via written correspondence on August 29, 2017, of the Tribunal's intent to summarily dismiss her Appeal and requesting a detailed written submission, explaining why her appeal has a reasonable chance of success.

[18] The Tribunal received the Appellant's written response on September 28, 2017, in which she states her appeal should not be summarily dismissed for the same grounds and reasons stated previously. She further stated that her appeal should not be dismissed due to the fact that she believes the Respondent erred in fact, law, and /or a mix of fact and law, and that all of her employment over the 20-year period since 1997 has not been taken into consideration, for which ROE's have been submitted to the Respondent relating to her employment with F.C.H.C.; I.G.I.; and R.C. She asserted that all of her former employment should be considered by the Respondent and there was no evidence that it was. In closing, the Appellant states that other grounds and complaints exist, which were not specified, and she reserves and preserves her rights.

SUBMISSIONS

[19] The Appellant submitted that:

- She has worked over 20 years since 1997.
- All of her previous employment should be considered allowing her further EI benefits.
- There is no indication that the Respondent considered all of her previous employment.

[20] The Respondent submitted that:

- The EI Act stipulates that in order to qualify for regular EI benefits the Appellant must have experienced an interruption of earnings and must also have acquired in her qualifying period at least the number of hours of insurable employment set out in section 7 of the EI Act.
- The Appellant's qualifying period is from January 24, 2016, to January 21, 2017, as per section 8 of the EI Act.
- The Appellant has not worked since establishing her previous benefit period. Therefore, she has zero hours of insurable employment in her qualifying period from January 24, 2016, to January 21, 2017, and cannot establish a benefit period to be paid regular EI benefits.
- The Respondent submitted additional representations to the Tribunal on September 29, 2017, in which they request that the Tribunal summarily dismiss this appeal.

ANALYSIS

[21] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) stipulates that the General Division of the Tribunal must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[22] The DESD Act does not provide a definition of what a reasonable chance of success is and subsection 53(1) has not yet been interpreted by the courts. Therefore, the Tribunal is guided

by the Federal Court of Appeal decisions *Lessard-Gauvin v. Attorney General of Canada,* 2013 FCA 147, and *Sellathurai v. Minister of Public Safety and Emergency Preparedness,* 2011 FCA 1, which consider the same concept in the context of its preliminary dismissal provisions, as outlined below.

[23] In *Lessard-Gauvin v. Attorney General of Canada,* 2013 FCA 147, the Federal Court of Appeal states:

> [8] The standard for a preliminary dismissal of an appeal is high. This Court will only summarily dismiss an appeal if it is obvious that the basis of the appeal is such that the appeal has no reasonable chance of success and is clearly bound to fail…

[24] When applying this test in *Lessard-Gauvin v. Attorney General of Canada,* 2013 FCA 147, the Court determined that it was "indeed plain and obvious on the very face of" the evidence of the court clerk's direction that it applied only to the appellant's notice of application.

[25] In *Sellathurai v. Minister of Public Safety and Emergency Preparedness,* 2011 FCA 1, the Federal Court of Appeal indicated:

> [8] … in the context of an appeal in a citizenship case that the test set out under *Hunt v. Carey Canada Inc.,* [1990] 2 S.C.R. 959 applies to a preliminary motion to strike the appeal. Under this test, it must be "plain and obvious" that the appeal has no chance of success.

[26] Accordingly, in determining whether the appeal should be summarily dismissed pursuant to subsection 53(1) of the DESD Act, the Tribunal applies the following legal test: it is plain and obvious on the face of the record that the appeal is bound to fail.

[27] In order to qualify for EI benefits, subsection 7(2) of the EI Act sets out the number of hours of insured employment the Appellant must accumulate in her qualifying period in relation to the regional rate of unemployment.

[28] The Respondent determined that the regional rate of unemployment which applies to the Appellant's January 31, 2017, initial claim is 10.5% and that she requires 525 hours of insurable

employment in her qualifying period, pursuant to subsection 7(2) of the EI Act. The Appellant does not dispute this.

[29] Subsection 8(1) of the EI Act provides that the qualifying period of an insured person is the shorter of the 52-week period immediately before the beginning of a benefit period and the period that begins on the first day of an immediately preceding benefit period ending at the end of the week before the beginning of a benefit period.

[30] The Appellant did not dispute the evidence that her initial claim for EI benefits was made on January 31, 2017, that she had established a previous benefit period on October 25, 2015, and was paid 63 weeks of regular EI benefits ending January 21, 2017. Furthermore, the Appellant did not dispute that she has not worked since October 16, 2015.

[31] The Respondent determined the Appellant's qualifying period is from Sunday, January 24, 2016, to Saturday, January 21, 2017, and that because she has not worked in insurable employment since October 16, 2015, she has zero hours of insurable employment in this period, pursuant to subsection 8(1) of the EI Act.

[32] The Appellant did not dispute the fact that she has zero hours of insurable employment from January 24, 2016, to Saturday, January 21, 2017. She simply argued that her employment for the previous 20 years should be considered and that it was her opinion that she was entitled to additional EI benefits.

[33] Based on the above, the Appellant has failed to present an arguable case. As stated above, the Appellant did not dispute the fact that at the time she made her initial claim for benefits on January 31, 2017, she did not have the required 525 insurable hours in her qualifying period from January 24, 2016, to Saturday, January 21, 2017. Nor does the Appellant dispute the fact that she has not worked since establishing her previous benefit period effective October 25, 2015. Accordingly, it is plain and obvious on the face of the record that this appeal is bound to fail.

[34] The Tribunal recognizes that the Appellant is of the opinion that she should be entitled to additional EI benefits because of the length of time she has been working. However, the Courts have clearly established that being short of the required hours, as stipulated by subsection 7(2) of the EI Act, cannot remove the defect from an initial claim. This requirement of the EI Act does

not allow for any discrepancies and provides no discretion (*Canada (Attorney General) v. Lévesque,* 2001 FCA 304).

[35] In response to the Appellant's submission that she believes the Respondent erred in fact, law, and /or a mix of fact and law, the Appellant failed to submit evidence to support this belief. It is not enough to simply make an assertion that the Respondent erred in fact, law, or mixed fact and law, without identifying what the error is and without providing evidence in support of her argument. In this case the Appellant failed to identify what factual or legal error the Respondent made.

[36] Regarding the Appellant's closing statement in her September 28, 2017, submissions, that other grounds and complaints exist, and that she reserves and preserves her rights, the Appellant failed to identify further grounds or complaints. In addition, she has provided no evidence to support these assertions.

[37] Based on the above, the Tribunal finds this appeal has no reasonable chance of success and must be summarily dismissed, pursuant to ssubsection 53(1) of the DESD Act.

CONCLUSION

[38] The appeal is summarily dismissed.

Linda Bell
Member, General Division - Employment Insurance Section