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

Citation: *F. N. v. Canada Employment Insurance Commission*, 2018 SST 118

Tribunal File Number: AD-17-450

BETWEEN:

F. N.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: February 2, 2018

REASONS AND DECISION

INTRODUCTION

[1] On April 26, 2017, the General Division of the Social Security Tribunal of Canada determined that the Applicant's (also referred to as the Claimant) initial claim for benefits could not be regarded as having been made on an earlier day pursuant to subsection 10(4) of the *Employment Insurance Act* (EI Act). The Claimant filed an application for leave to appeal with the Tribunal's Appeal Division on June 12, 2017.

ISSUES

[2] Was the application for leave to appeal filed on time and, if not, should an extension of time be granted to allow a late filing?

[3] Does the appeal have a reasonable chance of success?

THE LAW

[4] Paragraph 57(1)(*a*) of the *Department of Employment and Social Development Act* (DESD Act) provides that an application for leave to appeal must be made within 30 days after the day on which the General Division decision is communicated to the appellant.

[5] Paragraph 19(1)(*a*) of the *Social Security Tribunal Regulations* states that the decision is deemed to have been communicated to a party 10 days after the day on which it was sent to the party, if sent by ordinary mail.

[6] Subsection 57(2) of the DESD Act permits the Appeal Division to allow further time within which an application for leave to appeal is to be made.

[7] 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.

[8] 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.

[9] According to subsection 58(1) of the DESD Act, the following are the only grounds of appeal:

> (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.

SUBMISSIONS

[10] The Claimant submits that her apartment building mailbox was broken from May 8 to May 12, 2017, and that she did not receive the General Division decision until May 16, 2017.

[11] As for her application for leave to appeal, the Claimant argues that she did not know the importance of filing her claim for benefits without delay, and that the result is unfair.

ANALYSIS

Preliminary Issue: Late Application

[12] The General Division decision was issued on April 26, 2017. The Claimant submitted that her mailbox was broken between May 8 and May 12, and that she did not receive the decision letter in the mail until May 16, 2017. There is no evidence to the contrary.

[13] Tribunal records also show that the Claimant inquired as to the status of her decision on April 26, 2017, and was told by a Tribunal officer to wait three to four weeks to receive it. The actual delivery date is within the estimate provided by the Tribunal officer and it therefore

seems plausible that the delivery was simply late, or that it was attempted during the time the mailbox was broken and that delivery was not re-attempted until several days after the mailbox was repaired.

[14] I accept the Claimant's evidence and find that the decision was communicated on May 16, 2017. Paragraph 57(1)(*a*) of the DESD Act states that the Claimant must file her application for leave to appeal within 30 days of the date the decision is communicated to her. Her application, filed on June 12, 2017, is within 30 days of that date, and is therefore not out of time.

[15] Therefore, I do not need to consider whether the Claimant should be granted an extension of time.

Leave to Appeal: Does the Claimant have a reasonable chance of success on appeal?

[16] In her leave to appeal application, the Claimant indicated that the General Division had erred by failing to observe a principle of natural justice or by otherwise acting beyond or refusing to exercise its jurisdiction. The Claimant described why she disagreed with the General Division's conclusion but she did not specify in what way the General Division had breached a principle of natural justice or made an error of jurisdiction.

[17] In consequence, the Appeal Division wrote to the Claimant on June 19, 2017, requesting that she complete her application by providing her reasons for appealing. The letter explained the grounds of appeal, and asked that the Claimant explain why she thought she had a reasonable chance of success on any of those grounds. According to Tribunal records, the Claimant called in response to the June 19 letter and was informed by a Tribunal employee that the Tribunal needed to provide the reasons for her appeal as well as why her appeal had a reasonable chance of success. She indicated that she would submit a response shortly. On July 4, 2017, the Claimant called again to say that she had not responded because she had been hospitalized. A Tribunal employee again explained that she needed to prove that there was a mistake in the General Division's decision and that she needed to provide grounds for the appeal.

[18] The Tribunal's telephone records do not indicate that the Claimant clarified her grounds of appeal verbally, and she did not file any additional written explanation.

[19] Natural justice is concerned with whether a party is treated fairly by the process, not with the perceived fairness of the decision outcome. It is usually understood to mean the right to an unbiased decision maker and the right to be heard and to know or answer the case. Nothing in the Claimant's application suggests that the process at the General Division was unfair. Nor has the Claimant identified any error of jurisdiction. I do not find an arguable case on the stated ground on which the Claimant brought this application.

[20] However, the Claimant also stated in her application that she did not have a good understanding of the unemployment insurance system and she said she was not able to access (benefits) due to (her) not understanding the rules around timelines. I will assume that she intended to argue that the General Division made findings of fact that failed to take into account her ignorance of the system or the law. This could be an "erroneous finding of fact" as defined in paragraph 58(1)(*c*) of the DESD Act.

[21] This had not been her principle argument at the General Division. The Claimant had testified that she had not applied for benefits in a timely manner because she had been out of the country, she had been sick with her pregnancy and depressed on her return, and she had expected to resume her previous employment. On questioning by the General Division member, the Claimant added that she did not know she would qualify for benefits after being out of the country.

[22] On review of the record, I do not find that there is a reasonable chance of success in arguing that the General Division ignored or misunderstood her evidence. The General Division considered her evidence but found that it did not meet the test for "good cause." The General Division decision addresses her various reasons for delaying her application, and acknowledges her explanation that she did not know she would qualify, but it found that all of her reasons did not "demonstrate that she did what a reasonable and prudent person would have done in the same circumstances to satisfy themselves of their rights and obligations under the Act."

[23] Furthermore, the Claimant has not raised an arguable case that the General Division made an error of law. In finding that the Claimant had not established that she had good cause, the General Division applied the appropriate legal test. According to subsection 10(4) of the EI

Act, a claim may be antedated only if it is found that there is good cause for the delay in making the initial claim for Employment Insurance benefits throughout the entire period of the delay.

[24] Finally, I am not satisfied that there is an arguable case that the General Division erred in its application of the law to the facts, if that is the Claimant's contention. Decisions of the Federal Court of Appeal support the General Division's determination that a lack of knowledge as to entitlement is not "good cause." It has consistently held that a claimant is under a positive obligation to ascertain his or her obligations under the EI Act. It has also held that a claimant who is acting in good faith and chooses to seek employment rather than to receive benefits, as the Claimant apparently did in the period between March 2015 and August 2015, has still not demonstrated "good cause" as would be required to have the claim antedated.[1] The General Division is required to apply the law, including the law as interpreted by the courts.

[25] The Applicant has not identified any ground of appeal on which she would have a reasonable chance of success, nor do I find any. I have reviewed the record in full to determine whether any other relevant evidence was overlooked or misunderstood or whether any other error is apparent. The General Division appears to have treated the Claimant fairly and correctly, understood and considered all the relevant evidence, and applied the correct legal test properly. The General Division was sympathetic to the Claimant's difficult circumstances, but it could not find that the Claimant had good cause throughout the entire period of the delay.

[26] I am unable to find any error in the General Division decision such that the Claimant would have a reasonable chance of success on appeal.

CONCLUSION

[27] The application for leave to appeal is refused.

Stephen Bergen
Member, Appeal Division

[1] See *Canada (Attorney General) v. Carry*, 2005 FCA 367.