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

Citation: *H. H. v. Canada Employment Insurance Commission*, 2018 SST 553

Tribunal File Number: AD-18-19

BETWEEN:

H. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: March 18, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, H. H. (Claimant), established a benefit period commencing June 13, 2015, and collected the full 15 weeks of Employment Insurance sickness benefits, which concluded on October 10, 2015. She was medically fit to return to work on May 1, 2016, but her former job was no longer available. She did not apply for regular benefits until October 10, 2016, because she understood that she was required to wait a year from the end of her sickness benefits before applying.

[3] The Claimant's claim for regular benefits was initially denied because she had no insurable hours within the qualifying period, and her subsequent request to antedate her claim was also denied on the basis that she did not have good cause for delaying her application. The Claimant sought reconsideration of the refusal by the Respondent, the Canada Employment Insurance Commission (Commission), to antedate her claim, but the Commission maintained its decision. The General Division of the Social Security Tribunal dismissed her appeal and she now seeks leave to appeal to the Appeal Division.

[4] There is no reasonable chance of success. The Claimant has not made out an arguable case that the General Division erred in relation to any of the grounds of appeal described in s.58 of the *Department of Employment and Social Development Act* (DESD Act).

ISSUE

[5] Is there an arguable case that the General Division erred in finding that the Claimant did not have good cause for delay in filing her application for regular benefits?

ANALYSIS

General Principles

[6] The General Division is required to consider and weigh the evidence that is before it and to make findings of fact. It is also required to consider the law. The law would include the statutory provisions of the *Employment Insurance Act* (Act) and the *Employment Insurance Regulations* that are relevant to the issues under consideration, and could also include court decisions that have interpreted these statutory provisions. Finally, the General Division must apply the law to the facts in order to reach its conclusions on the issues that it must decide.

[7] The appeal to the General Division was unsuccessful, and the application now comes before the Appeal Division. The Appeal Division is only permitted to interfere with a decision General Division if the General Division has made certain types of errors, which are called "grounds of appeal."

[8] Subsection 58(1) of the DESD Act sets out 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.

[9] Unless the General Division erred in one of these ways, the appeal cannot succeed, even if the Appeal Division disagrees with the General Division's conclusion or result.

[10] At this stage, I must find that there is a reasonable chance of success on one or more grounds of appeal in order to grant leave and allow the appeal to go forward. A reasonable chance of success has been equated to an arguable case.[1]

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[1] *Canada (Minister of Human Resources) v. Hogervorst*, 2007 FCA 41; *Ingram v. Canada (Attorney General)*, 2017 FC 259.

Is there an arguable case that the General Division erred in finding that the Claimant did not have good cause for delay in filing her application for regular benefits?

[11] There is no arguable case that the General Division erred in finding as it did. The Claimant did not select any of the three grounds of appeal in the application for appeal form.[2] In fact, in written submissions in support of her appeal, she stated that "the choices you give on the form in Section 7 [of the leave application form] have never been an issue and are still not an issue in why my 'insurance' has been denied."[3]

[12] In my separate decision granting the Claimant an extension of time in which to file her leave application, I suggested that the Claimant would have to clarify her grounds of appeal under s. 58(1) of the DESD Act and to describe on what basis she believes the General Division had erred in reaching its decision.

[13] When I issued the extension of time decision, I also directed that a letter be sent to the Claimant (dated March 29, 2018) requesting that she supply the missing grounds and explain in what manner she believed the General Division had erred. The Claimant submitted a response[4] in which she reiterated her disagreement with the Commission's decision and expressed her dissatisfaction with the process. However, she did not direct me to any particular error committed by the General Division.

[14] In her notice of appeal, the Claimant stated that a Commission agent gave her misinformation and as a result, she waited until October 2016 to request regular benefits. At the General Division hearing, the Claimant was more precise. She testified that an agent of the Commission told her that she had a year in which to claim regular benefits. The Claimant stated that she had understood that this year ran from the end of her sickness benefits.

[15] The General Division understood that the Claimant believed that she had a year in which to apply for additional benefits, beginning with the expiry of her sickness benefits, and that she had waited to apply while she attempted to clarify her medical status. While the General Division accepted that the Claimant did not fully understand the Commission's information about the

[2] AD1A.
[3] AD1.
[4] AD1C.

duration of her benefit period, it was not satisfied that the Commission agent had provided inaccurate information.[5]

[16] As noted by the General Division, s.10(5) of the Act permits a claim to be antedated if there is good cause for the delay. In considering whether the Claimant had "good cause," the General Division referred to the decision in *Beaudin*,[6] which requires a claimant to have "acted as a reasonable person would have done in the same situation in order to satisfy himself of his rights and obligations under the Act." Relying on the Claimant's testimony, the General Division found that the Claimant did not seek additional information about her rights and obligations under the Act until she again sought to make claim in October 2016.[7]

[17] The General Division also referred to *Somwaru*,[8] which says that unless there are exceptional circumstances, a reasonable person is expected to take prompt steps to understand their entitlement to benefits and obligations under the Act. While the General Division acknowledged that the Claimant had ongoing health issues and medical tests, it was not satisfied that the state of the Claimant's health constituted an exceptional circumstance.[9]

[18] The General Division's findings of fact were based on the evidence before it and it made no apparent error of law. While the Claimant may disagree with the General Division's findings or conclusions, the Federal Court has been clear that simple disagreement with the General Division's findings[10] or the manner in which the evidence was weighed[11] does not disclose a valid ground under s. 58(1) of the DESD Act.

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[5] General Division, para. 34.
[6] *Canada (Attorney General) v. Beaudin*, 2005 FCA 123.
[7] General Division decision, para. 35.
[8] *Canada (Attorney General) v. Somwaru*, 2010 FCA 336.
[9] General Division decision, para. 36.
[10] *Griffin v. Canada (Attorney General)*, 2016 FC 874.
[11] *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[19] In *Karadeolian,*[12] the Federal Court also cautioned that:

> […] the Tribunal must be wary of mechanistically applying the language of section 58 of the [DESD] Act when it performs its gatekeeping function. It should not be trapped by the precise grounds for appeal advanced by a self-represented party like [the Claimant].

Following the direction of the Federal Court, I have reviewed the record for evidence that was overlooked or misunderstood, but I am unable to find an arguable case in relation to such an error.

[20] The Claimant has not made out an arguable case in regard to any of the grounds of appeal described in s.58(1) of the DESD Act and there is no reasonable chance of success on appeal.

CONCLUSION

[21] The Application is refused.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	H. H,, self-represented

[12] *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.