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

Citation: *G. T. v. Canada Employment Insurance Commission*, 2018 SST 841

Tribunal File Number: AD-18-512

BETWEEN:

G. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: August 27, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, G. T. (Claimant), was employed as a daycare worker until she was laid off on April 28, 2017. She applied for Employment Insurance regular benefits on December 8, 2017. She requested to have her claim antedated to April 29, 2017, explaining that she had been delayed in applying for benefits because she had been looking for work. The Respondent, the Canada Employment Insurance Commission, denied her claim because she did not have enough hours of insurable employment.[1] The Respondent also denied the Claimant's request to antedate her claim because she had not proven that she had good cause for applying late.[2]

[3] The Claimant sought a reconsideration of these decisions on the ground that someone had initially misinformed her she was ineligible for Employment Insurance benefits due to her age.[3] The Respondent maintained its decision that she had insufficient hours and its decision not to antedate her claim. The Claimant appealed the reconsideration decision to the General Division. The General Division found that the Claimant had not shown good cause for the entire period of the delay in applying for benefits. The General Division also found that the Claimant had insufficient hours of insurable employment in her qualifying period to establish a claim for benefits.

[4] The Claimant now seeks leave to appeal the General Division's decision on the ground that the General Division erred in law. I must now decide whether the appeal has a reasonable chance of success—that is, whether there is an arguable case that the General Division erred in law.

[5] I am refusing leave to appeal because I am not satisfied that there is an arguable case that the General Division either erred in law or based its decision on an erroneous finding of fact that

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[1] Respondent's letter dated December 12, 2017, at GD3-17 to GD3-18.
[2] Respondent's letter dated January 23, 2018, at GD3-20.
[3] Request for Reconsideration dated January 24, 2018, at GD3-21 to GD3-22.

it made without regard for the material before it when it decided that the Claimant did not have good cause for her delay.

ISSUE

[6] Is there an arguable case that the General Division erred in law or that it based its decision on an erroneous finding of fact made without regard for the material before it, when it decided whether the Claimant had good cause for the delay in applying for Employment Insurance benefits?

ANALYSIS

[7] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to one or all of 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.
>
> (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, I need to be satisfied that the reasons for appeal fall within the grounds of appeal set out under s. 58(1) of the DESDA and that the appeal has a reasonable chance of success. This is a relatively low bar. Claimants do not have to prove their case; they simply have to establish that the appeal has a reasonable chance of success based on a reviewable error. The Federal Court endorsed this approach in *Joseph v. Canada.*[4]

[9] The Claimant argues that the General Division erred in law, but she has not identified any specific errors. She also suggests that the General Division based its decision on an erroneous finding of fact without regard to the material before it when it decided against antedating her

[4] *Joseph v. Canada (Attorney General)*, 2017 FC 391.

claim. The Claimant suggests that the General Division failed to consider the fact that she had been misinformed about her eligibility for benefits and, as such, the General Division should have antedated her application. In particular, she now claims that when her spouse was laid off from his employment in October 2017, he had contacted Service Canada and had been informed that after age 65, he was no longer eligible for Employment Insurance regular benefits. (The reference to October 2017 is likely a typographical error, and the Claimant may in fact have intended to write October 2012.)

[10] This is the first time that the Claimant has raised these facts. These particular facts had not been presented to the General Division. Generally, new evidence is not permitted on an appeal, except in limited circumstances. The Claimant has not presented any reasons for me to admit this evidence under any of the exceptions to the rule. Even so, I find that this evidence would have been irrelevant to explaining her delay in applying for benefits between April 29, 2017 and October 2017, when she claimed her spouse Service Canada. The General Division required the Claimant to show good cause for the entire period of delay—not just from October 2017 to December 8, 2017. In other words, even if this evidence had been before the General Division, it would not have helped the Claimant establish good cause for the entire period of delay.

[11] There is no merit to the Claimant's suggestion that the General Division failed to consider this evidence. Simply, that evidence was not part of the hearing record before the General Division.

[12] As I noted above, I recognize that there is likely a typographical error and that the Claimant intended to write that her husband had been laid off in October 2012, rather than October 2017. However, there was already similar evidence before the General Division. At paragraph 15 of its decision, the General Division noted the Claimant's testimony that a friend informed her that she was not eligible for benefits because she was over 65 years of age. The General Division considered this evidence when determining whether the Claimant had good cause for the delay in applying for Employment Insurance benefits. Therefore, it cannot be said that the General Division based its decision on an erroneous finding of fact without regard for the material before it.

[13] Essentially the Claimant is seeking a reassessment, but an appeal before the Appeal Division does not entail a reassessment or rehearing. As I have noted above, there are limited grounds of appeal under s. 58(1) of the DESDA. As Gleason, J.A., wrote in *Garvey v. Canada*,[5] mere disagreement with the application of settled principles to the facts of a case does not provide me with the basis to intervene. Such a disagreement does not constitute an error of law or an erroneous finding of fact made in a perverse or capricious manner or without regard to the evidence, as set out under s. 58(1) of the DESDA.

[14] Finally, I have reviewed the underlying record. I do not see that the General Division erred in law, whether or not the error appears on the record, or that it failed to properly account for any of the evidence before it.

[15] Given these considerations, I am not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

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

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	R. T., for the Applicant

[5] *Garvey v. Canada (Attorney General)*, 2018 FCA 118.