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

Citation: *T. W. v. Canada Employment Insurance Commission*, 2018 SST 1095

Tribunal File Number: AD-18-616

BETWEEN:

T. W.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: October 25, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, T. W., sought Employment Insurance (EI) benefits in July 2018 after being laid off from his job in April 2018.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), refused the claim for benefits because the Applicant did not have good cause during the entire period from April 15, 2018, to July 15, 2018, to apply late for benefits. The Applicant requested reconsideration. The Commission maintained its initial decision.

[4] The General Division found that the Applicant had not made any efforts to contact the Commission about his rights and obligations regarding EI and he did not meet the legal test of a "reasonable and prudent person," so he did not have good cause, throughout the period in question, for the delay in making his claim.

[5] The Applicant filed the Application with the Appeal Division and submitted that the General Division did not properly evaluate his case. He argues that the General Division's decision was wrong in law. He also submits new evidence.

[6] I find that the appeal does not have a reasonable chance of success because the Application simply repeats arguments the Applicant made to the General Division and does not disclose any reviewable errors.

ISSUES

[7] Is there an arguable case that the General Division based its decision on an error of law?

[8] Is the Applicant's new evidence admissible at the Appeal Division?

ANALYSIS

[9] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.[1]

[10] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?[2]

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success[3] based on a reviewable error.[4] The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

[12] The Applicant submits that the General Division failed to take into account his personal circumstances and failed to properly assess "the reasonable person" test that is cited. He argues that the General Division believed his testimony but found against him, which is contradictory.

[13] I note that the Applicant has requested expedited treatment of this matter, based on financial hardship, and that it has been expedited before the General Division and the Appeal Division.

Issue 1: Is there an arguable case that the General Division based its decision on an error of law?

[14] I find that there is no arguable case that the General Division erred in law.

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[1] *Department of Employment and Social Development Act* (DESD Act) at ss. 56(1) and 58(3).
[2] *Osaj v. Canada (Attorney General)*, 2016 FC 115, at para. 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208, at para. 36; *Glover v. Canada (Attorney General)*, 2017 FC 363, at para. 22.
[3] DESD Act at s. 58(2).
[4] *Ibid.* at s. 58(1).

[15] This appeal turns on whether the Applicant had good cause for delay in applying for the entire period of the delay in making his claim.[5] The onus to prove good cause is on the Applicant.[6] The question that decision-makers must ask when assessing good cause is whether the Applicant acted as a reasonable person in the same situation would have done in order to satisfy himself of both his rights and his obligations under the *Employment Insurance Act* (EI Act).[7]

[16] The General Division correctly stated the relevant legislative provisions, the binding jurisprudence, and the applicable legal tests.[8]

[17] The General Division determined that the Applicant did not take any steps to inquire about EI benefits from April 15, 2018, to July 15, 2018. The General Division accepted the Applicant's evidence that he did not take any steps because:

a) he was unaware of the timeframe;

b) he believed he would be employed quickly and would not need EI; and

c) he had paid into the EI system.[9]

[18] Nevertheless, the General Division concluded that a reasonable person "would not have waited as long as the [Applicant] did to satisfy himself of his rights and obligations under the Act. Someone that has lost their employment and are in need of financial assistance would have taken steps to inquire with Service Canada as to what the steps are in order to establish a claim."[10]

[19] The General Division correctly applied the legal tests established in binding Federal Court of Appeal jurisprudence.

[20] The General Division considered the Applicant's arguments and the evidence on file. It considered his testimony and each of the reasons he gave to explain his delay in applying for EI

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[5] *Canada (Attorney General) v. Kaler*, 2011 FCA 266.
[6] *Canada (Attorney General) v. Chalk*, 2010 FCA 243; *Canada (Attorney General) v. Trinh*, 2010 FCA 335.
[7] *Kaler*, *supra* note 5; *Canada (Attorney General) v. Beaudin*, 2005 FCA 123.
[8] General Division decision, at paras. 7 to 11.
[9] *Ibid*. at para. 13.
[10] *Ibid.* at para. 18.

benefits. The General Division decision includes an analysis of each of the Applicant's arguments, including that the Applicant was genuinely unaware of the time limit to file an EI claim. The General Division did not err in law by failing to consider the Applicant's relevant arguments.

[21] A simple repetition of the Applicant's arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[22] The Applicant also argues that his situation should have been reviewed in the context of the General Division believing his testimony that he was not aware that he had to file an EI claim within 30 days. In this and other ways, the Applicant submits that he did not act as a reasonable person would have. Therefore, the General Division erred in law by applying the test of "a reasonable person" in his situation.

[23] This is not a reason for appeal that has a reasonable chance of success either. The binding jurisprudence is consistent: the correct legal test is whether the Applicant acted as a reasonable person in the same situation would have done in order to satisfy himself of both his rights and his obligations under the EI Act.

[24] The General Division applied the correct legal test to the facts. It did not commit a reviewable error in so doing.

[25] I have read and considered the General Division decision and the documentary record. I find that the General Division did not overlook or misconstrue any important evidence. There is no suggestion that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction or that it erred in law in coming to its decision.

[26] The appeal does not have a reasonable chance of success based on this ground.

Issue 2: Is the Applicant's new evidence admissible at the Appeal Division?

[27] The Applicant's new evidence is not admissible at the Appeal Division.

[28] The Application includes an attached "Physician's Statement" dated September 20, 2018, which forms part of a RBC Disability Claim Form. It states a date of diagnosis of depression as March 2018.

[29] The Applicant submits this document to show that he was "both mentally unwell suffering from depression and physically unwell […] where [he continues] to suffer from both today at this time...."

[30] The Tribunal wrote to the Applicant to explain that the Appeal Division cannot consider new evidence, except in limited situations. It noted that another option was for the Applicant to make an application to rescind or amend a General Division decision based on new evidence. It asked for the Applicant to reply and tell the Tribunal whether he would like to file an application to rescind or amend his General Division decision.[11]

[31] The Applicant has written to the Tribunal many times, sometimes multiple times in the same day. He requests an expedited hearing and asks that the Tribunal answer his many questions. His questions are mostly about when he will have a hearing and why his questions are not being answered. Recently, he asked for statistical information about appeals filed at the Tribunal in 2016 and 2017.

[32] I take it from the Applicant's correspondence that he wants to proceed with this Application as quickly as possible and that he does not want to file an application (with the General Division) to rescind or amend the General Division decision. I note that there is a time limit within which such an application must be file, if the Applicant reconsiders.

[33] New evidence is not a ground of appeal under s. 58 of the DESD Act. It was incumbent upon the Applicant to present any evidence he had to the Commission and to the General Division before or at the hearing. The Applicant obtained new evidence after the General Division rendered its decision, but he submits it as evidence that he was ill before and during the period of delay in filing his claim. It may be possible for the Applicant to file an application to rescind or amend the General Division decision based on this evidence, but the new evidence is not admissible at the Appeal Division on this Application.

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[11] Letters dated October 1 and 12, 2018.

[34] The new evidence was not in the record before the General Division. Therefore, it cannot form the basis of an argument that the General Division made a reviewable error by not considering the information the evidence allegedly contains.

[35] The appeal does not have a reasonable chance of success based on the new evidence.

[36] The Tribunal wrote one letter in response to the Applicant's numerous emails.[12] It noted that the Applicant's request to expedite the matter has been granted and that an appeal hearing will be scheduled only if the Appeal Division grants leave to appeal and determines that a hearing is necessary. It also reminded the Applicant to follow the process.

[37] It is not within the appeal process to provide the kind of statistical information that the Applicant is requesting.

[38] As for a hearing date, the Application is refused, so no appeal hearing will be scheduled.

CONCLUSION

[39] I am satisfied that the appeal has no reasonable chance of success, so the Application is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	T. W., self-represented

[12] Letter dated October 12, 2018.