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

Citation: *I. C. v Canada Employment Insurance Commission*, 2018 SST 1286

Tribunal File Number: AD-18-679

BETWEEN:

I. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: December 12, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, I. C. (Claimant), made a claim for Employment Insurance regular benefits. However, he was late in making his claim. He requested an antedate, explaining that he had not known that he was required to fill out reports and that he had been waiting for a Record of Employment from his employer. The Respondent, the Canada Employment Insurance Commission (Commission), denied his claim, both initially and on reconsideration. The Claimant appealed the Commission's reconsideration decision to the General Division. The General Division dismissed the appeal, finding that the Claimant had "not show[n] that he had good cause throughout the entire delay period for his failure to file his reports during the allowable period."[1]

[3] The Claimant now seeks leave to appeal the General Division's decision on two grounds. I must decide whether there is an arguable case on either of these grounds. The application for leave to appeal is refused because I find that the appeal does not have a reasonable chance of success.

ISSUES

[4] There are two issues before me:

> Issue 1: Is there an arguable case that the General Division erred in law when it determined that the Claimant was required to file claim reports?
>
> Issue 2: Is there an arguable case that the General Division based its decision on an erroneous finding of fact without regard for the fact that the Claimant was unaware of the reporting requirements?

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[1] General Division decision at para 1.

ANALYSIS

[5] Section 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to 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; 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.

[6] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the grounds of appeal set out under section 58(1) of the DESDA and that the appeal has a reasonable chance of success. This is a relatively low bar. A claimant does 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 (Attorney General)*.[2]

[7] Section 58(1) of the DESDA provides for limited grounds of appeal. It does not give the Appeal Division any jurisdiction to conduct any reassessments.

Issue 1: Is there an arguable case that the General Division erred in law when it determined that the Claimant was required to file claim reports?

[8] The Claimant argues that the General Division erred in law when it determined that he was required to file claim reports. He submits that there was no legal requirement for him to file reports. He argues that he is unable to "find a hint as to the requirement of one having to

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

complete reports even before claim is finalized online and [he does] not think it is in the legislation either."[3]

[9] The General Division addressed whether the Claimant had filed reports within the allowable time. The General Division noted that the Claimant did not dispute at that time that he had not submitted reports within the allowable time. The General Division cited section 26(1) of the *Employment Insurance Regulations* which states that: "Subject to subsection (2), a claim for benefits for a week of unemployment in a benefit period shall be made by a claimant within three weeks after the week for which benefits are claimed." The General Division also cited *Canada (Attorney General) v Kokavec*,[4] where the Federal Court of Appeal held that a claimant must act diligently in making a claim for employment benefits and that, according to section 26(1) of the *Employment Insurance Regulations* (Regulations), a claim for benefits for a given week of unemployment in a benefit period must be made within three weeks after the week for which benefits are claimed.

[10] The General Division erred in citing section 26(1) of the *Employment Insurance Act*, when it should have cited section 26(1) of the *Employment Insurance Regulations*, but clearly this was a typographical error. The General Division reproduced the pertinent sections of both the *Employment Insurance Act* and section 26(1) of the Regulations) in an annex. Apart from the typographical error, there is a clear legislative requirement for the Claimant to make a claim, that is, to file reports. As such, I am not satisfied that there is an arguable case that the General Division erred in law when it determined that the Claimant was required to file reports.

Issue 2: Is there an arguable case that the General Division based its decision on an erroneous finding of fact without regard for the fact that the Claimant was unaware of the reporting requirements?

[11] The Claimant argues that the General Division ignored or overlooked key pieces of evidence and gave little weight to the fact that he had been unaware of any reporting requirements or to the fact that this information was not readily apparent or available to him. I

[3] Application to the Appeal Division – Employment Insurance, at AD1-3.
[4] *Canada (Attorney General) v Kokavec*, 2008 FCA 307 at para 3.

asked him to identify any particular evidence that he claimed the General Division overlooked,[5] but he did not respond.

[12] The General Division set out and considered the Claimant's evidence. The General Division noted the Claimant's explanation that he had been unaware that he had to complete reports and that he had received poor advice from Service Canada. The General Division also found that the Claimant had not taken any steps to ascertain his rights and obligations, so it is irrelevant whether this information was readily apparent or available. Because the General Division considered the Claimant's explanation that he was unfamiliar with the process and that he had received poor advice, it cannot be said that the General Division overlooked or ignored this evidence.

[13] The Claimant asserts that the General Division should have given more weight to the fact that he was unaware of any reporting requirements. There is no basis for this argument. As the trier of fact, the General Division is best placed to assess the evidence before it and to determine the appropriate amount of weight to assign. As the Federal Court held in *Hussein v Canada (Attorney General)*,[6] the "weighing and assessment of evidence lies at the heart of the [General Division's] mandate and jurisdiction. Its decisions are entitled to significant deference." Furthermore, the issue of the weight to be assigned to evidence does not fall within any of the listed grounds of appeal under section 58(1) of the DESDA. The Federal Court of Appeal has declined to interfere with a decision-maker's assignment of weight to the evidence, holding that such an exercise is "the province of the trier of fact."[7]

[14] The Claimant also blames the Commission, in part, for failing to inform him of any reporting requirements, particularly when it was aware that it was the first time that he was applying for Employment Insurance benefits and that he was unfamiliar with the claims process. He argues that the Commission therefore owed a duty to inform him of his obligations. There is no merit to this submission because the Commission does not owe such a duty to any claimants.

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[5] Tribunal's letter dated November 14, 2017, at AD2.
[6] *Hussein v Canada (Attorney General)*, 2016 FC 1417.
[7] *Simpson v Canada (Attorney General)*, 2012 FCA 82.

CONCLUSION

[15] I am not satisfied that the appeal has a reasonable chance of success. Accordingly, the application for leave to appeal is refused.

Janet Lew
Member, Appeal Division

SUBMISSIONS:	I. C., Applicant