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

Citation: *C. L. v Canada Employment Insurance Commission*, 2018 SST 1304

Tribunal File Number: AD-18-793

BETWEEN:

C. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: December 21, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, C. L. (Claimant), was temporarily laid off from her employment, but she did not apply for Employment Insurance benefits until after she had returned to work. She requested that her application be antedated to the date of her layoff. The Respondent, the Canada Employment Insurance Commission (Commission), refused her antedate request because she did not have good cause for the delay in filing her application. When the Claimant asked the Commission to reconsider, it revised the effective date of the application to January 28, 2018 but this did not entitle the Claimant to any benefits because she had already returned to work by that time.

[3] The Claimant appealed to the General Division of the Social Security Tribunal, but her appeal was dismissed. She now seeks leave to appeal to the Appeal Division.

[4] There is no reasonable chance of success on appeal. The Claimant has not raised an arguable case that the General Division ignored or misunderstood relevant evidence or made any finding in a perverse or capricious manner.

ISSUE

[5] Is there an arguable case that the General Division's finding—that the Claimant did not have good cause for her delay—was made in a perverse or capricious manner or without regard for the Claimant's evidence that she made multiple attempts to seek assistance?

ANALYSIS

[6] The Appeal Division may intervene in a decision of the General Division only if it can find that the General Division has made one of the types of errors described by the "grounds of appeal" in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[7] To grant this application for leave and to allow the appeal process to move forward, I must first find that there is a reasonable chance of success based on one or more of the grounds of appeal. A reasonable chance of success has been equated to an arguable case.[1]

Is there an arguable case that the General Division's finding—that the Claimant did not have good cause for her delay—was made in a perverse or capricious manner or without regard for the Claimant's evidence that she made multiple attempts to seek assistance?

[8] Section 10(4) of the *Employment Insurance Act* (EI Act) states that a claim will be regarded as having been made on an earlier day if the claimant shows that they qualified to receive benefits on the earlier date and if there was good cause for the delay in filing throughout the entire period of the delay.

[9] To establish good cause, the Claimant must show that she acted as a reasonable and prudent person would have done in similar circumstances throughout the entire period of the delay,[2] as noted by the General Division.

[10] The Claimant submits that the General Division erred by stating that the Claimant was busy with seasonal obligations, and that it did not consider the Claimant's evidence of having made multiple attempts to contact the Service Canada office for assistance.

[11] In this case the Claimant was found to have good cause for the delay from January 28, 2018, through to the receipt of her online application on February 28, 2018, but she was not found to have good cause between December 17, 2017, and January 28, 2018.

[12] The General Division found that the Claimant did not establish good cause during this period for a number of reasons, including because she was busy with seasonal obligations. The Claimant did not tell the Commission or testify that she was busy with seasonal obligations, as such. She told the Commission that she may have forgotten to apply in the period before she returned to work because she had medical and dental appointments and that she babysat a niece for a few days.

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[1] *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; *Ingram v Canada (Attorney General)*, 2017 FC 259.
[2] *Canada (Attorney General) v. Burke*, 2012 FCA 139.

[13] However, there is no arguable case that the General Division misunderstood the Claimant's evidence as having been busy with "seasonal obligations." The Claimant's layoff period included the week before, and the week after, Christmas - from December 18, 2017, to January 1, 2018. The Claimant had arranged various appointments, which may or may not have had something to do with the Christmas season. At the General Division hearing, her representative confirmed that the Claimant had medical and dental appointments and family obligations in the week following her layoff and that she had anticipated a return-to-work date of January 2, 2018.[3] This suggests that the Claimant was busy during that week because she had anticipated the employer's seasonal layoff. Her representative also said that it was reasonable for the Claimant to have been unable to go to the Service Canada office during the Christmas week because she "travelled to family."[4] While the Claimant did not describe her obligations as seasonal, she clearly had obligations related to the fact of her seasonal layoff and there is no arguable case that the General erred by simply labeling those obligations as "seasonal".

[14] The Claimant also asserted that there was evidence that she had made multiple attempts to seek help from a Service Canada office. According to the Claimant's testimony, she first attempted to apply online on January 6, 2018, with the assistance of her husband, but was unsuccessful in submitting the application.[5] According to the Claimant's testimony, she visited the Service Canada office four or five times beginning in mid-January, with the intention of submitting her application but, because she could only go there at the end of her work day, the agents did not have enough time to assist her when she arrived. She finally took a day off work at the end of February where she went to Service Canada and was helped to complete her application. The General Division clearly considered these multiple attempts as well as the reasons the attempts were unsuccessful.[6]

[15] The Claimant was unable to point to any evidence that was ignored or misunderstood. However, in accordance with the direction of the Federal Court in *Karadeolian v Canada (Attorney General)*,[7] I have reviewed the record for any other evidence that might have been

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[3] General Division hearing audio recording at 00:18:50.
[4] *Ibid*. at 00:23:40.
[5] General Division audio recording at 00:17:03.
[6] General Division decision para 6 and 7.
[7] *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

ignored or overlooked and that may, therefore, raise an arguable case. I did not discover any significant evidence that could have been relevant to the General Division's decision but that was arguably ignored or misunderstood.

[16] I also did not identify any finding that could arguably be said to be perverse or capricious in the light of the evidence available: the General Division found that it would have been reasonable for the Claimant to seek some sort of accommodation from her employer or to obtain alternate transportation so that she could get to Service Canada in time to get help, and that it would be reasonable for the Claimant to obtain help from someone else to file her application online. The General Division's conclusions appear to be rationally connected to the evidence, and there is no arguable case that they are either perverse or capricious.

[17] I understand that the Claimant disagrees with the manner in which the General Division weighed and analyzed the evidence and with its conclusions, but simple disagreement with the findings does not establish a ground of appeal under section 58(1) of the DESD Act.[8] Nor does a request to reweigh the evidence establish a ground of appeal that has a reasonable chance of success.[9]

[18] There is no arguable case that 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 evidence before it, or that it erred under section 58(1)(c) of the DESD Act by doing so.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	Joanne Ford, for the Applicant

[8] *Griffin v Canada (Attorney General)*, 2016 FC 874.
[9] *Tracey v Canada (Attorney General)*, 2015 FC 1300.