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

Citation: *V. P. v Canada Employment Insurance Commission*, 2019 SST 17

Tribunal File Number: AD-18-750

BETWEEN:

V. P.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: January 10, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, V. P. (Claimant), delayed her application for Employment Insurance benefits while she grieved her dismissal through her union. When she was not reinstated to her position, she applied for benefits, asking that her claim be antedated to the date she lost her employment. The Respondent, the Canada Employment Insurance Commission (Commission), denied her request to antedate on the basis that she did not have a good reason for the delay.

[3] The Claimant asked the Commission to reconsider, but the Commission maintained its original decision. The Claimant next appealed to the General Division of the Social Security Tribunal, which dismissed her appeal. She now seeks leave to appeal to the Appeal Division.

[4] There is no reasonable chance of success. The Claimant has not raised an arguable case that the General Division ignored or misunderstood any evidence.

ISSUE

[5] Is there an 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 material before it?

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] The only grounds of appeal are described below:

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.

[8] To grant this application for leave and allow the appeal process to move forward, I must find that there is a reasonable chance of success on one or more 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 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] The Claimant submits that the General Division made errors of fact in relation to the following: She was not advised to apply in "a time period that would have avoided the delay"; she was not advised she that she would be "penalized" for applying when she did, and; she did not consider it necessary to apply for benefits because she had expected to return to work. The Claimant also submits that the General Division erred when it found that the Claimant did not act as a reasonable person.[2]

[10] The General Division noted that the Claimant's union representative advised her to apply for Employment Insurance benefits on October 6, 2017.[3] The General Division also states that she could have applied as early as December 18, 2016,[4] so it is clear that the General Division recognized that the Claimant's representative did not advise her to apply until there had already been a substantial delay.

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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] AD1-4
[3] General Division decision at para 14.
[4] General Division decision at para 9.

[11] The General Division does not mention that the Claimant was not advised she could be penalized for making a late claim. However, the General Division is not required to refer to each and every piece of evidence, but may be presumed to have considered the evidence before it.[5] The fact that the Claimant may not have been fully aware of the consequences of delaying her application for benefits is not relevant to whether she had good cause for the delay. As the General Division noted, the Claimant is responsible for satisfying herself of her rights and obligations under the Act.[6] This principle is well-established in law.[7]

[12] Regarding the Claimant's expectation that she would be returning to work, the General Division acknowledged that the Claimant had hoped her grievance would be resolved within two months and lead to her being reinstated to her employment, and that she was not reinstated as she had hoped.

[13] There is no arguable case that the General Division misunderstood or ignored the Claimant's evidence or that its conclusions are not rationally connected to the evidence. The Claimant disagrees with the findings of the General Division, including the finding that she did not act as a reasonable person, but her disagreement with the findings does not establish a ground of appeal under section 58(1) of the DESD Act.[8] I do not have the authority to reweigh the evidence and substitute my judgement for that of the General Division except in connection with some particular section 58(1) error.

[14] In *Karadeolian v Canada (Attorney General)*,[9] the Federal Court stated: "[T]he 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". Accordingly, I have considered whether there is an arguable case that any other significant evidence was ignored or misunderstood. However, I have not discovered this to be the case.

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[5] *Simpson v Canada (Attorney General*), 2012 FCA 82.
[6] General Division decision at para 20.
[7] General Division decision at para 6.
[8] *Griffin v Canada (Attorney General)*, 2016 FC 874.
[9] *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

[15] Therefore, there is no arguable case that the General Division erred under section 58(1)(c) by basing 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.

[16] The Claimant has no reasonable chance of success on appeal.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	Denise Garneau Sadler, representative for the Applicant