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

Citation: *M. R. v Canada Employment Insurance Commission*, 2019 SST 87

Tribunal File Number: AD-19-22

BETWEEN:

M. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: February 6, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, M. R. (Claimant), left her job in February 2016 but did not apply for Employment Insurance benefits until November 22, 2016. On May 7, 2018, she requested that her claim be antedated to February 21, 2016. The Respondent, the Canada Employment Insurance Commission (Commission), refused her request, finding that she did not have good cause for the delay. The Claimant appealed to the General Division, but her appeal was dismissed. She now seeks leave to appeal.

[3] The Claimant has no reasonable chance of success. The Claimant has not made out an arguable case that the General Division erred in law or that it misunderstood or ignored relevant evidence on which the decision was based. Furthermore, the Appeal Division has no jurisdiction to consider whether the General Division made an error in how it applied the law to the facts.

ISSUES

[4] Is there an arguable case that the General Division erred in law by misinterpreting the meaning of "good cause for the delay"?

[5] Is there an arguable case that the General Division ignored or misunderstood evidence related to the Claimant's reasons for delaying her application?

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 as follows:

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 permit 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]

Issue 1: Is there an arguable case that the General Division erred in law by misinterpreting the meaning of "good cause for the delay"?

[9] The Claimant argues that the General Division erred in law, but she does not clearly state how the General Division erred. The General Division clearly understood that the Claimant must show good cause throughout the entire period of the delay, as set out in section 10(4) of the *Employment Insurance Act* (EI Act). The General Division also referred to appropriate decisions of the Federal Court of Appeal that interpreted the meaning of good cause for the purposes of section 10(4) of the EI Act.

[10] In her submission, the Claimant referred to a Canadian Umpire Benefit (CUB) decision in which the Umpire said that ignorance of the law does not mean that a late claim cannot be accepted. The General Division is not required to follow CUB decisions, but I note that it cited a similar principle from *Canada (Attorney General) v Beaudin*:[2] "Confusion with the [Employment Insurance] application process and ignorance of the law, brought about by good faith, would constitute good cause so long as the claimant was able to establish that he or she had acted as a reasonable and prudent person or established the existence of exceptional circumstances."

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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 Beaudin*, 2005 FCA 123.

[11] The General Division did not dismiss the appeal because the Claimant did not know or understand the law. The appeal was dismissed because the Claimant did not show that she did what a reasonable and prudent person would have done in the same circumstances to satisfy herself as to her rights and obligations under the EI Act.[3] This decision is consistent with the jurisprudence from the Federal Court of Appeal.

[12] There is no arguable case that the General Division erred in law under section 58(1)(b) of the DESD Act.

Issue 2: Is there an arguable case that the General Division ignored or misunderstood evidence related to the Claimant's reasons for delaying her application?

[13] The General Division understood that the Claimant believed she could not apply for Employment Insurance benefits unless the Record of Employment (ROE) was filed and that she delayed applying for this reason. She had asked her employer for her ROE on numerous occasions and did not hear until November 2016 that her employer had actually issued an ROE, which was filed with the Commission in April 2016. The General Division also understood that the Claimant did not contact the Commission by telephone or in person to enquire about her rights and obligations at any time from February 2016 to November 2016

[14] The Claimant does not dispute any of the above facts. Her argument seems to be that the General Division ignored additional evidence, namely; her testimony that she had accessed the Commission's website and verified that she needed an ROE to apply for Employment Insurance benefits and that she needed to contact her employer to have it issued. She also testified that she had checked her online account on an Employment Insurance website in March 2016 and verified that the employer had not issued her ROE at that time. I agree with the Claimant that the General Division did not specifically refer to the Claimant's visits to the Employment Insurance website or to what she understood she read there, and that it did not acknowledge that the Claimant had checked whether her ROE was issued as late as March 2016.

[15] However, the General Division clearly understood that the Claimant was at least familiar with her own online account with Service Canada. It also understood that this is how she

[3] General Division decision at paras 17–19.

eventually discovered that the ROE had been submitted. The General Division acknowledged that the Claimant believed she could not file an application without an ROE and that she had made some effort to get it from her employer.

[16] The General Division decision concluded that the Claimant did not act as a reasonable or prudent person to determine her entitlement to Employment Insurance benefits and that she, therefore, did not have good cause for the delay. The General Division did not reach this decision because of a finding that the Claimant failed to access Employment Insurance benefit information online or a finding that she never checked her online account. The General Division decision was based on its finding that the Claimant waited nine months before actually making specific enquiries and before filing her application.

[17] The General Division is not required to refer to each and every piece of evidence before it, but it is presumed to have considered all the evidence.[4] In my view, the evidence to which the Claimant refers is not so significant that its omission from the General Division decision must also mean that this evidence was not considered or understood.

[18] Even if I accepted that the General Division ignored the Claimant's evidence that she had accessed an Employment Insurance website to get her information or that she had confirmed that the employer had not yet submitted her ROE (at a time that was approximately eight months before she applied for benefits), I do not accept that this would not have altered the General Division's understanding of the essential facts on which it based its decision.

[19] Therefore, there is no arguable case that the General Division based its decision on an erroneous finding that was made in a perverse or capricious manner or without regard for the material before it, as per section 58(1)(c) of the DESD Act.

[20] The Claimant's submissions suggest that she also believes that the General Division erred when it did not accept that the actions she took to satisfy herself as to her rights and obligations were what a "reasonable and prudent" person would have done. If the General Division made no error of law, and also considered all the relevant facts on which it based its decision, then this would be an argument that the General Division made what is termed an error of "mixed fact and

[4] *Simpson v Canada (Attorney General)*, 2012 FCA 82.

law." The Federal Court of Appeal in *Quadir v Canada (Attorney General)*[5] recently confirmed that the Appeal Division has no jurisdiction to consider questions of mixed fact and law. I cannot review whether the General Division erred in applying settled law to the facts as it found them.

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

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	M. R., self-represented

[5] *Quadir v Canada (Attorney General)*, 2018 FCA 21.