



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. K. v Canada Employment Insurance Commission*, 2019 SST 484

Tribunal File Number: GE-19-1473

BETWEEN:

L. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Glen Johnson

DATE OF DECISION: April 30, 2019

REASONS AND DECISION

DECISION

[1] The Tribunal finds that the appeal must be summarily dismissed as there is no reasonable chance of success.

OVERVIEW

[2] The Appellant applied for regular employment insurance (EI) benefits on January 4, 2017 and a benefit period was established effective January 1, 2017.

[3] He received separation pay from his employer which was allocated against his claim for EI benefits from January 1, 2017 to February 3, 2018. On account of receiving separation pay his benefit period was extended by 52 weeks to 104 weeks which was December 29, 2018.

[4] In his economic region he is entitled to 35 weeks of EI benefits and given that he was a long-tenured employee in a hard-hit economic region he is entitled to an additional 17 weeks of EI benefits in his benefit period, which made his total eligibility 52 weeks (subsection 12(2), *Employment Insurance Act (EI Act)* and Bill-C-15). However, he was paid 44 weeks up to December 29, 2018, which was the end of his benefit period.

[5] The Appellant submits that he should be entitled to 8 further weeks of EI benefits because the Respondent erroneously informed him that his benefit period would extend to July 20, 2019.

[6] The Respondent determined that the Appellant did not qualify for 8 further weeks of EI benefits despite erroneous information given to him because employment insurance legislation does not allow for the exercise of a discretion to re-write the plain meaning of its language.

PRELIMINARY

[7] The Appellant was advised in writing of the Tribunal's intention to proceed by way of summary dismissal and he was given a reasonable period to make further submissions (*Social Security Tribunal Regulations*, section 22). He provided a further submission saying that he should be entitled to a further 8 weeks of EI benefits because he relied upon the Respondent's erroneous advise causing him financial loss.

ISSUE

[8] Does the appeal have a reasonable chance of success?

ANALYSIS

[9] Subsection 53(1) of the *Department of Employment and Social Development Act* (*DESD Act*) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

Does the appeal have a reasonable chance of success?

[10] The Tribunal finds the appeal does not have a reasonable chance of success.

[11] The term "*reasonable chance of success*" is not defined in the *DESD Act*, so the Tribunal refers to the interpretation given by the Federal Court of Appeal where the legal test applied was whether it is plain and obvious on the face of the record that the appeal is bound to fail, regardless of the evidence or arguments that could be presented at a hearing (*Lessard-Gauvin v. Canada (Attorney General)*, 2013 FCA 147).

[12] The Tribunal finds that the Appellant is entitled to and was paid 44 weeks of EI benefits during his benefit period ending December 29, 2018 and he is not entitled to an additional 8 weeks of benefits due to misinformation given to him by the Respondent.

[13] The Respondent determined that the Appellant was entitled to 44 weeks of regular EI benefits within his 104 week benefit period which was extended by 52 weeks

from January 1, 2017 to December 29, 2018 by operation of subsection 10(14) of the *EI Act*.

[14] The Appellant asks the Tribunal to make an exception to the application of the legislated requirements in the EI legislation by claiming he should be allowed to collect an additional 8 weeks of benefits because of misinformation given to him by the Respondent that his benefit period would be extended to July 20, 2019. He said that he has suffered financial loss because he relied upon the misinformation.

[15] However, the law binds an EI claimant, even if he receives and acts on information from the Respondent or others that is incorrect (*Granger v. Canada Employment and Immigration Commission*, [1986] 3 F.C. 70, affirmed [1089]1 S.C.R. 141).

[16] The Tribunal is sympathetic to the financial loss which may have arisen from erroneous advice given to the Appellant by the Respondent, but his entitlement to EI benefits was created by legislation and as such, the Tribunal is required to interpret and apply the provisions as they are set out in the EI legislation, which does not allow any discretion.

[17] The Tribunal is established to render fair, unbiased and reasoned decisions with predictable outcomes for certainty in the application of EI legislation. The Tribunal does not have power to allow exceptions, and the legislation states that the General Division **must** summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

CONCLUSION

[18] The Tribunal finds that when applying the legal test for summary dismissal in this case it is plain and obvious that the appeal is clearly bound to fail, and as a result, the appeal has no reasonable chance of success.

[19] The appeal is summarily dismissed.

Glen Johnson
Member, General Division - Employment Insurance Section