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

Citation: *A. Z. v Canada Employment Insurance Commission*, 2019 SST 505

Tribunal File Number: AD-19-238

BETWEEN:

A. Z.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: May 22, 2019

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] This is an appeal of the General Division's decision dated March 29, 2019. The General Division summarily dismissed the appeal of the Appellant, A. Z. (Claimant), who sought additional weeks of Employment Insurance sickness benefits from the Respondent, the Canada Employment Insurance Commission. The General Division member determined that the Claimant had received the maximum number of weeks of sickness benefits allowed under the *Employment Insurance Act*. The member also determined that it did not have any authority to increase the number of weeks of sickness benefits.

[3] The Claimant argues that 15 weeks of sickness benefits is insufficient, given the debilitating nature of her illness and the lengthy treatment she has had to undergo. She suggests that the General Division should have extended the number of weeks of sickness benefits because of her medical circumstances.

[4] No leave is necessary in the case of an appeal brought under s. 53(3) of the *Department of Employment and Social Development Act* (DESDA), as there is an appeal as of right when dealing with a summary dismissal from the General Division. Having determined that no further hearing is required, this appeal before me is proceeding pursuant to section 37(a) of the *Social Security Tribunal Regulations.*

ISSUE

[5] Did the General Division refuse to exercise its jurisdiction or did it err in law when it determined that it was unable to extend the number of weeks of Employment Insurance sickness benefits?

ANALYSIS

[6] Subsection 58(1) of the 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.

[7] The Claimant received 15 weeks of sickness benefits between October 14, 2018 and January 26, 2019, but, according to her oncologist, the Claimant was unable to return to work for medical reasons until March 1, 2019. The Claimant remained unwell and continued to receive treatment after January 26, 2019. She argues that, as such, she should have been entitled to receive additional weeks of sickness benefits after January 26, 2019. She argues that the General Division erred in law and that it failed to exercise its jurisdiction when it refused to extend the number of weeks of sickness benefits.

[8] Subsection 12(3)(c) of the *Employment Insurance Act* states that the maximum number of weeks for which benefits may be paid in a benefit period because of a prescribed illness is 15 weeks. Section 12 of the *Employment Insurance Act* also allows for combined weeks of benefits under a limited number of factual circumstances, for instance, such as when a claimant is providing care or support to one or more critically ill children. However, none of those circumstances exists here to allow for combining weeks of benefits.

[9] Clearly, the Claimant remained unwell and continued to receive medical treatment after January 26, 2019. However, the *Employment Insurance Act* does not provide any discretionary authority for members of the Social Security Tribunal to extend the maximum number of weeks of sickness benefits, irrespective the nature of a claimant's illness or the length of one's treatment.

[10] The Respondent submits that failure was "pre-ordained" no matter what evidence or arguments the claimant might have presented at a hearing. As the Respondent points out in its submissions, in *Lessard-Gauvin v. Canada (Attorney General)*,[1] the Federal Court of Appeal has held that it will only summarily dismiss an appeal if it is obvious that the basis of the appeal is such that the appeal has no reasonable chance of success and is "clearly bound to fail".

[11] I find no error in the General Division's interpretation and application of subsection 12(3)(c) of the *Employment Insurance Act*. Given the facts before it, I find that the General Division properly concluded that the appeal had no reasonable chance of success and was clearly bound to fail. I find that, as such, the General Division properly summarily dismissed the matter.

CONCLUSION

[12] The appeal is dismissed.

Janet Lew
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	A. Z., Appellant I. Thiffault, Representative for the Respondent

[1] *Lessard-Gauvin v. Canada (Attorney General)*, 2013 FCA 147.