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

Citation: *S. A. v Canada Employment Insurance Commission*, 2019 SST 579

Tribunal File Number: AD-19-155

BETWEEN:

S. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: June 11, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, S. A. (Claimant), applied for Employment Insurance benefits on July 23, 2018. She initially requested an antedate to February 18, 2018, but later modified her request to ask that her claim be antedated to January 7, 2018. The Commission denied her request for antedate, finding that she did not have good cause throughout the entire period of the delay, and the Commission maintained this decision on reconsideration. 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.

[3] The Claimant has no reasonable chance of success on appeal. She has not made out an arguable case that the General Division made a perverse or capricious finding or a finding that ignored or misunderstood any of the evidence.

ISSUE

[4] Did the General Division base 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

[5] 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 Ac*t (DESD Act).

[6] 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 on one or more of the grounds of appeal. A reasonable chance of success has been equated to an arguable case.[1]

[7] The grounds of appeal under section 58(1) 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.

Issue: Did the General Division base 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] The only ground of appeal selected by the Claimant on her application for leave to appeal is that ground dealing with an erroneous finding of fact. The Claimant did not otherwise state what finding she considered to be in error, how that finding might have been perverse or capricious, or what evidence the General Division ignored or misunderstood to reach the finding.

[9] The Tribunal wrote to the Claimant on April 3, 2019, to request that the Claimant explain her reasons for the appeal in more detail. The letter elaborated on the available grounds for appeal. The Claimant was given until May 6, 2019, to submit her reasons in full, but the Tribunal has not received a response.

[10] However, the Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal. In *Karadeolian v. Canada (Attorney General),*[2] the Court stated as follows: "[T]he Tribunal must be wary of mechanistically applying the language of section 58 of the

[1] *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; *Ingram v Canada (Attorney General)*, 2017 FC 259.
[2] *Karadeolian v. Canada (Attorney General)*, 2016 FC 615

[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 like [the Applicant in that case]."

[11] Therefore, even though the Claimant did not identify any evidence that the General Division ignored or misunderstood to make findings of fact, I have reviewed the record for any significant evidence that might have been ignored or overlooked and that may, therefore, raise an arguable case.

[12] Section 10(4) of the *Employment Insurance Act* allows a claimant to make an initial claim for benefits to be effective on an earlier date (or *antedate*), if the claimant can show that he or she would have been entitled to benefits on the earlier day, and that there was good cause for the delay.

[13] The General Division understood the Claimant's reasons for her delay in filing her application for benefits. The General Division decision reveals that the member was aware that the Claimant was looking for work and attending interviews after her layoff from the employer. The decision also acknowledged that the Claimant did not think to ask for support after her layoff until she spoke to social assistance in July 2018, and that the Claimant had said that she was not aware of the process for applying for EI benefits. The General Division member did not find this last statement to be credible because the Claimant had previously applied for benefits in 2013-2014, although the member also noted that the Claimant had made the application with assistance. The General Division referred to the Claimant's testimony about her financial circumstances, but stated that it must apply the law. (Financial need is not relevant to the analysis of whether the Claimant had good cause for her delay.)

[14] Having considered this evidence, the General Division found the Claimant did not have good cause for the delay throughout the whole period of delay from January 7, 2018, to July 23, 2018, and the appeal was dismissed as a result.

[15] I accept that the General Division's understanding of the facts and its findings of fact are consistent with the information on the Commission file and the Claimant's testimony at the General Division. I have not discovered any occasion where the General Division ignored or misunderstood her evidence, and the General Division's conclusion flows from the application of

the law, including legal interpretations drawn from Federal Court of Appeal decisions, to the facts.

[16] The Claimant has not made out 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, under section 58(1)(c) of the DESD Act.

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

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	S. A., Self-represented