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

Citation: *J. O. v Canada Employment Insurance Commission*, 2019 SST 832

Tribunal File Number: AD-19-559

BETWEEN:

J. O.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: September 3, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. O. (Claimant), is seeking leave to appeal the General Division's decision dated July 12, 2019. Leave to appeal means that an applicant has to get permission from the Appeal Division before they can move on to the next stage of the appeal process.

[3] The General Division refused to antedate (backdate) the Claimant's application of January 2019 for Employment Insurance benefits to October 21, 2018, because it found that she had not proven she had good cause for the delay in filing her application for benefits. The General Division found that the Claimant had not acted as a reasonable and prudent person would have done in the same circumstances. The Claimant argues that the General Division failed to consider the evidence before it.

[4] I have to be satisfied that the appeal has a reasonable chance of success before granting leave to appeal. I am not satisfied that the appeal has a reasonable chance of success and am therefore refusing the application for leave to appeal.

ISSUE

[5] Is there an arguable case that the General Division erred in law by applying too high a standard for the reasonable person?

ANALYSIS

[6] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that the Claimant's reasons for appeal fall into at least one of the three grounds of appeal listed in subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA). The appeal also has to have a reasonable chance of success.

[7] The only three grounds of appeal under subsection 58(1) of the DESDA are:

(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] A reasonable chance of success is the same thing as an arguable case at law.[1] This is a relatively low bar because claimants do not have to prove their case; they simply have to show that there is an arguable case. At the actual appeal, the bar is much higher.

[9] The Claimant argues that the General Division failed to consider why she was late when she applied for Employment Insurance benefits. When her employer laid off her from her employment, no one informed or advised her that she should immediately apply for Employment Insurance benefits. Because of this, she mistakenly believed that she was either ineligible for benefits or that it was inappropriate for her to apply for them. She argues that she acted reasonably, based on her understanding of the Employment Insurance process. She further argues that she acted in a reasonable and prudent manner by applying for benefits once she learned that she could be eligible for them and that applying for them would not adversely impact her credit history or future employability. She did not delay after this point. She notes that she also started looking for work immediately after her layoff.

[10] In fact, the General Division considered this evidence. At paragraph 11 to 12, the General Division noted the Claimant's evidence that her employer had not provided any information about the Employment Insurance program, that she was concerned that receiving benefits could affect her credit rating, and that she had been looking for work. The General Division also considered whether there were any exceptional circumstances.

[1] This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[11] The Claimant is arguing that the General Division erred in applying settled law to the facts. However, the Federal Court of Appeal has affirmed that the Appeal Division has no jurisdiction to consider errors that merely involve a disagreement on the application of settled law to the facts.[2] The Appeal Division may intervene under subsection 58(1) of the DESDA when an error of mixed fact and law committed by the General Division discloses an extricable legal issue, but such is not the case here.

[12] The Claimant is simply re-arguing her case before the General Division and asking me to reassess the evidence and come to a different conclusion based on the same facts that were before the General Division. However, subsection 58(1) of the DESDA does not allow for a reassessment of the evidence or a rehearing of the matter.

[13] Even if I could conduct a reassessment, I would have come to the same decision as the General Division. I have to follow previous court decisions. The Federal Court of Appeal has consistently decided that an applicant in the Claimant's position would have taken reasonably prompt steps to determine their entitlement to Employment Insurance benefits and the steps that they should take to protect their claim for benefits.[3]

[14] The Claimant states that she never checked her paycheque stubs, so was unaware that employment insurance contributions were being deducted from her salary. She also did not check any tax forms or statements that employers gave to her because she gave them to her parents to file tax returns on her behalf. This was the first time she had ever applied for Employment Insurance benefits. A co-worker later told her that she should apply for Employment Insurance benefits because they would not affect her credit rating. Shortly after that, the Claimant applied for benefits. These are not exceptional circumstances that constitute good cause for delay.[4] And,

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[2] See *Cameron v Canada (Attorney General)*, 2018 FCA 100 and *Garvey v Canada (Attorney General)*, 2018 FCA 118.
[3] See for instance: *Canada (Attorney General) v. Somwaru*, 2010 FCA 336; *Canada (Attorney General) v. Kaler*, 2011 FCA 266; *Canada (Attorney General) v.* Trinh, 2010 FCA 335; and *Canada (Attorney General) v. Mehdinasabi*, 2009 FCA 282.
[4] In *Canada (Attorney General) v. Caron* (1986), 69 N.R. 132 (FCA), the Federal Court of Appeal said that there could be exceptional circumstances where inaction can constitute good cause for delay.

as the General Division noted, a claimant's reliance on rumours, unverified information or on unfounded and blind assumptions does not constitute good cause.[5]

[15] Given these considerations, I am not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

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

Janet Lew
Member, Appeal Division

APPLICANT:	J. O., Self-represented

[5] See paragraph 15 of the General Division decision, citing *Canada (Attorney General) v. Trinh*, 2010 FCA 335.