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

Citation: *W. H. v Canada Employment Insurance Commission*, 2019 SST 1235

Tribunal File Number: AD-19-624

BETWEEN:

W. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: September 24, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, W. H., established a claim for Employment Insurance benefits on December 30, 2018, but she did not complete any claim reports until April 2, 2019. She requested the Canada Employment Insurance Commission (Commission) to antedate her claim to December 30, 2018, but the Commission denied her request because it did not accept that the Claimant had good cause for her delay in completing her claim reports. The Commission maintained that decision after the Claimant requested a reconsideration.

[3] The Claimant appealed to the General Division of the Social Security Tribunal, which dismissed her appeal. She now seeks leave to appeal to the Appeal Division.

[4] The Claimant has no reasonable chance of appeal. She has not identified how the General Division failed to observe a principle of natural justice or made a jurisdictional error. I have not discovered any evidence that the General Division ignored or misunderstood, or any finding of fact that was not rationally connected to the evidence, so there is also arguable case that the General Division made an erroneous finding of fact.

ISSUES

[5] Is there an arguable case that the General Division bailed to observe a principle of natural justice or made a jurisdictional error?

[6] Is there an arguable case that the General Division based its decision on an erroneous finding of fact?

ANALYSIS

General Principles

[7] 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 s.58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[8] The only grounds of appeal are described below:

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.

[9] 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 bailed to observe a principle of natural justice or made a jurisdictional error?

[10] The Claimant selected all three possible grounds of appeal in completing her application for leave to appeal, but she has not explained how the General Division erred under any of the grounds.

[11] Natural justice refers to fairness of process and includes procedural protections such as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against him or her. The Claimant has not raised a concern with the adequacy of the notice of the General Division hearing, with the pre-hearing exchange or disclosure of documents, with the manner in which the General Division hearing was conducted or the Claimant's understanding of

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

the process, or with any other action or procedure that could have affected her right to be heard or to answer the case. Nor has she suggested that the General Division member was biased or that the member had prejudged the matter. Therefore, there is no arguable case that the General Division erred under s. 58(1)(a) of the DESD Act by failing to observe a principle of natural justice.

[12] Turning to jurisdiction, there was only one issue before the General Division, which was whether the Claimant was entitled to an antedate of her claim reports. The Claimant has not argued that the General Division failed to consider this issue or that it made a decision on any issue that was not properly before it, and she has not identified any other jurisdictional error.

[13] There is no arguable case that the General Division erred under s. 58(1)(a) of the DESD Act by refusing to exercise its jurisdiction or by acting beyond its jurisdiction.

Issue 2: Is there an arguable case that the General Division based its decision on an erroneous finding of fact?

[14] The Claimant's submission does not identify how the General Division made any error under section 58(1) of the DESD Act. She has essentially restated the position she set out in her reconsideration request and highlighted some of the circumstances of her delay, which she had described to the General Division.

[15] Section 50(4) of the *Employment Insurance Act* (EI Act) states that a claim for benefits for a week of unemployment shall be made within the prescribed time. Because the Claimant had not yet received any benefits, her claim was treated as a continuing claim. Section 26(1) of the *Employment Insurance Regulations* (Regulations) prescribes the time for continuing claims: Claimants are required to make weekly claim reports within three weeks of the week for which they are claiming benefits. If a claimant fails to make a report within three weeks, section 10(5) of the EI Act permits a late claim for continuing benefits to be made if the claimant shows that there was good cause for delay throughout the period of the delay

[16] After making her initial claim on January 4, 2019, the Claimant did not complete her weekly report for the week starting December 30, 2018, until April 2, 2019. The Claimant believes she should be entitled to benefits for January and February 2019, before she left Canada,

but it is apparent that, in those months, she did not make a claim for any week of benefits within three weeks of the week for which the benefits would be claimed.

[17] The General Division decision determined that the Claimant did not show that there was good cause for delay throughout the period of the delay. In doing so, it considered whether the Claimant had acted as a reasonable and prudent person. The General Division referenced the Federal Court of Appeal decision in *Quadir v Canada (Attorney General),*[2] which upheld the sufficiency of the "reasonable and prudent person" test.

[18] *Quadir* additionally found that the question of whether a claimant's actions may be considered reasonable and prudent in the circumstances is a question of mixed fact and law. *Quadir* confirmed that the Appeal Division does not have the jurisdiction to review questions of mixed fact and law. Therefore, I have no jurisdiction to consider whether the General Division should have found that the Claimant's actions were not those of a reasonable and prudent person, *unless* that finding ignored or misunderstood relevant evidence.

[19] The Claimant did not identify evidence that the General Division overlooked or misunderstood, or explain how any finding of the General Division was perverse or capricious in light of the evidence that was before it. Rather, the Claimant appears to disagree with the manner in which the General Division assessed the evidence, and with its conclusion. I can not intervene in the General Division decision unless I find an error under section 58(1) of the DESD Act. It is not my role to reweigh or reassess the evidence that was before the General Division.[3]

[20] I have searched the record for any other significant evidence that the General Division might have ignored or overlooked but that was not identified by the Claimant, in accordance with the direction of higher court decisions, such as *Karadeolian v. Canada (Attorney General).*[4] On review of the record, I was unable to discover an arguable case that the General Division overlooked or misunderstood any evidence that was relevant to any finding of fact on which the decision was based, including the finding that the Claimant did not act as a reasonable and prudent person in delaying the filing of her claim reports.

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[2] *Quadir v Canada (Attorney General),* 2018 FCA 21
[3] *Bergeron v. Canada (Attorney General), 2016 FC 220; Hideq v. Canada* (*Attorney General*), *2017 FC 439*
[4] *Karadeolian v. Canada (Attorney General),* 2016 FC 615

[21] There is no arguable case that the General Division based its decision on an erroneous finding of fact under s. 58(1)(c) of the DESD Act.

[22] The Claimant's appeal has no reasonable chance of success.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	W. H., Self-represented