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

Citation: *C. M. v Canada Employment Insurance Commission*, 2020 SST 13

Tribunal File Number: AD-20-7

BETWEEN:

C. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: January 10, 2020

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal.

OVERVIEW

[2] The Applicant, C. M. (Claimant), was employed as a temporary instructor in a college. She stopped working on April 19, 2019, when she was not rehired for next semester. She applied for Employment Insurance (EI) benefits on June 24, 2019. She asked that the application be treated as if it was made on April 20, 2019. The Commission refused this request. The Claimant appealed to the General Division.

[3] The General Division found that the Claimant was aware of EI benefits but did not act promptly to determine her entitlement to those benefits. It concluded that the Claimant did not act a reasonable and prudent person in similar circumstances for the entire delay period.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. In her application for leave to appeal, the Claimant submits that the General Division failed to observe a principle of natural justice and erred in law in making its decision to refuse the antedate.

[5] The Tribunal must decide whether the Claimant raised some reviewable error of the General Division upon which the appeal might succeed.

[6] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[7] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

ANALYSIS

[8] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of a General Division decision. These reviewable errors are that the General Division: failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[10] Therefore, before leave can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[11] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of natural justice, jurisdiction, law, or fact, the answer to which may lead to the setting aside of the General Division decision under review.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[12] In support of her application for leave to appeal, the Claimant puts forward that she did not apply for benefits because she did not realize she would be eligible. She submits that the General Division failed to observe a principle of natural justice and erred in law since the *Employment Insurance Act* (EI Act) does not explicitly mention that the ignorance of the law coupled with good faith is not sufficient to establish good cause.

[13] To establish good cause under section 10(4) of the EI Act, a claimant must be able to show that she did what a reasonable person in her situation would have done to satisfy herself as to her rights and obligations under the EI Act.

[14] The General Division concluded that the Claimant did not prove good cause because she did not act a reasonable and prudent person in similar circumstances for the entire delay period. It determined that the Claimant was aware of employment insurance benefits through her prior employment as a teacher. It found that a reasonable and prudent person in the Claimant's circumstances would have made inquiries with the Commission about her rights and obligations soon after her separation of employment.

[15] The Federal Court of Appeal has established that a claimant as an obligation to make prompt inquiries with the Commission to verify eligibility.[1] The Federal Court of Appeal has also established that ignorance of the process, even coupled with good faith, does not constitute good cause under the EI Act.[2]

[16] The undisputed evidence before the General Division shows no effort on the Claimant's part to determine her entitlement or to verify her obligations under the EI Act.

[17] The General Division correctly determined that a delay in applying based on the Claimant's expectation of finding employment or based on an unverified assumption regarding eligibility does not constitute good cause for purposes of section 10(4) of the EI Act.

[18] In light of the above conclusion of the General Division, and the undisputed facts in support of said conclusion, the Tribunal is not convinced that the appeal has a reasonable chance of success. The Claimant has not set out a reason which falls into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

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[1] *Canada (Attorney General) v Innes*, 2011 FCA 341, *Canada (Attorney General) v Thrinh*, 2010 FCA 335, *Howard v Canada (Attorney General)*, 2011 FCA 116, *Shebib v Canada (Attorney General)*, 2003 FCA 88.
[2] *Attorney General of Canada v. Kaler, 2011 FCA 266, Canada (Attorney General) v Persiiantsev*, 2010 FCA 101.

CONCLUSION

[19] The Tribunal refuses leave to appeal.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	C. M., Self-represented