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

Citation: *Z. Z. v Canada Employment Insurance Commission*, 2020 SST 251

Tribunal File Number: AD-20-130

BETWEEN:

Z. Z.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: March 20, 2020

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division.

OVERVIEW

[2] The Applicant, Z. Z. (Claimant), applied for employment insurance sickness benefits in April 2015. He submitted three doctors' notes in support of his application and collected 15 weeks of sickness benefits. The Canada Employment Insurance Commission (Commission) conducted an investigation into the doctors who signed the notes. The Commission determined that the doctors' notes were not genuine and that the Claimant had not proven his entitlement to sickness benefits. It asked the Claimant to repay benefits. The Commission maintained its initial decision after reconsideration. The Claimant appealed to the General Division.

[3] The General Division determined that the Commission had a reasonable basis to extend the reconsideration period to 72 months since the doctors' notes were not real. It found that the Claimant did not have any evidence supporting his entitlements to sickness benefits. The General Division determined that the Claimant had to reimburse the sickness benefits received.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. In his application for leave to appeal, the Claimant puts forward that he lost his doctor's note that indicates he could not work. He submits that the General Division could have deduced how heavy his sickness was from one doctor's note dated April 18, 2016. He puts forward that he did not have a chance to reply to all of the Commission's submissions.

[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:

(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 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. The Claimant must meet this initial hurdle, but it is lower than the one of the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error.

[10] In other words, 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 in appeal, in order to grant leave.

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

[11] In support of his application for leave to appeal, the Claimant puts forward that he lost the doctor's note that indicates he could not work. He submits that the General Division could have deduced how heavy his sickness was from one doctor's note dated

April 18, 2016. He submits that he did not have a chance to reply to all of the Commission's submissions.

[12] The General Division determined that the Commission had a reasonable basis to extend the reconsideration period to 72 months since the doctors' notes were not real. It found that the Claimant did not have any evidence supporting his entitlements to sickness benefits. The General Division determined that the Claimant had to reimburse the sickness benefits received.

[13] The Federal Court of Appeal established that in order for the Commission to extend the period in which it can reconsider a claim under section 52(5) of the *Employment Insurance Act*, it does not have to establish that the claimant did in fact make false or misleading statements. The Commission must only show that it could reasonably consider that a false or misleading statement was made in connection with a benefit claim.

[14] The evidence shows that the Commission could find no record of Dr. Mark Tao in the provincial physicians' registry. An internet search did not show any links related to a Dr. Mark Tao. The office clinic address listed on the doctors' notes did not match with a Dr. Mark Tao.

[15] Based on this evidence, the Commission could reasonably find that the Claimant had made a false or misleading statement or representation and therefore could extend the reconsideration period to 72 months.

[16] The onus of proving that his incapacity to work is a result of sickness falls on the Claimant. The Commission may duly require such proof in accordance with section 40(1) of the *Employment Insurance Regulations* (EI Regulations).

[17] The evidence before the General Division shows that the Claimant did not comply with the requirement under the EI Regulations to present a valid medical certificate as proof that he was incapable of working during the period in which he had received sickness benefits. The General Division had to decided based on the evidence presented and could not presume of the Claimant's medical condition at the time he filed a claim for sickness benefits.

[18] The Claimant further submits that he did not have an opportunity to all the Commission's submissions, more precisely the allegation that he had filled out himself the application for sickness benefits. The General Division decision shows that the Claimant had an opportunity to reply. It found that even if the Claimant hired someone to complete his application, he still received sickness benefits that he was not entitled to receive.

[19] The Federal Court of Appeal has consistently held that a claimant who receives benefits, to which they are not entitled, even following a third party error, is not excused from having to repay them.[1]

[20] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[21] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, The Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[22] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	Z. Z., Self-represented

[1] *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.