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

Citation: *A. E. v Canada Employment Insurance Commission*, 2020 SST 343

Tribunal File Number: AD-20-603

BETWEEN:

A. E.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 20, 2020

Canada

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal.

OVERVIEW

[2] The Applicant, A. E. (Claimant), made an initial application for benefits on December 5, 2019. He requested that his application for benefits be backdated to September 15, 2019. The Commission refused the request. The Claimant appealed to the General Division.

[3] The General Division determined that the Claimant did not show good cause throughout the entire period of the delay in filing his application for 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 his application for leave to appeal, the Claimant submits that he has repeatedly raised the fact that he called the Commission on October 2, 2019, and that he was advised to wait until he received payment of his January 2019 sickness benefits before applying for regular benefits. The Commission rendered its sickness benefits decision on December 4, 2019.

[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* 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. 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 his 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.

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

[11] In his application for leave to appeal, the Claimant submits that he has repeatedly raised the fact that he called the Commission on October 2, 2019, and that he was advised to wait until he received payment of his January 2019 sickness benefits before applying for regular benefits. The Commission rendered its sickness benefits decision on December 4, 2019.

[12] To establish good cause under section 10(4) of the *Employment Insurance Act* (EI Act), a claimant must be able to show that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the EI Act.

[13] The General Division found that the Claimant did not prove good cause because he did not act a reasonable and prudent person in similar circumstances for the entire delay period. It found that a reasonable and prudent person in the Claimant's circumstances would have made inquiries with the Commission about his rights and obligations.

[14] The General Division accepted that the Claimant believed the employer was going to call him back to work after his unpaid vacation. It accepted his sworn testimony that the plant manager only called him on November 7, 2019, to confirm the lay-off. However, he had to show good cause for the entire period of his delay in applying for benefits. The General Division determined that the Claimant knew about the lay-off at least by November 7, 2019, but he still waited another month before applying for benefits.

[15] The General Division gave significant weight to the Claimant's testimony that he preferred to avoid requesting benefits since he wanted to work and take care of his family without any assistance. However, this preference does not show good cause under the EI Act.

[16] Before the General Division, the Claimant testified that he repeatedly raised the fact that he called the Commission on October 2, 2019, and received instructions to wait until he received payment of his January sickness benefits before applying for regular benefits.

[17] The General Division gave little weight to this part of the Claimant's testimony since he never mentioned it to the Commission at any point in his application for benefits or during the reconsideration process. He also did not raise this fact in his appeal application to the General Division.

[18] Furthermore, the evidence does not support the Claimant's argument that he was instructed by the Commission not to apply for regular benefits on October 2, 2019, since according to his accepted testimony, he did not know until November 7, 2019, that he was laid off from his job.

[19] 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]

[20] Furthermore, a delay in applying based on a claimant's expectation that he will eventually go back to work or based on his desire to be self-sufficient does not constitute good cause for purposes of section 10(4) of the EI Act.

[21] After reviewing the appeal file, the General Division decision, and the Claimant's arguments, 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.

CONCLUSION

[22] The Tribunal refuses leave to appeal.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	A. E., Self-represented

[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.