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

Citation: *FA v Canada Employment Insurance Commission*, 2017 SSTGDEI 207
Tribunal File Number: GE-16-3356

BETWEEN:

F. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Paul Demers

DATE OF DECISION: February 10, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] A claim for employment insurance benefits was filed on June 7, 2016.

[2] The Appellant's qualifying period was established from December 20, 2015 to April 23, 2016 pursuant to paragraph 8(1)(b)of the *Employment Insurance Act* (the Act) because he had qualified for a previous sickness benefit period effective December 20, 2015. He was paid 15 weeks of benefits on that claim.

[3] The Appellant worked for Trades Labour Corporation and accumulated 46 hours of insurable employment from March 15, 2016 to March 29, 2016.

[4] He resides in the Vancouver (52) region and the rate of unemployment in this region is 6.3%.

[5] The Respondent notified the Appellant on June 28, 2016 that he failed to qualify for benefits pursuant to subsection 7(2) of the Act because he needed 665 hours of insurable employment in his qualifying period whereas he had accumulated 46 hours.

[6] On July 11, 2016, the Appellant made a request for reconsideration of the decision. In support of his request for reconsideration, the Appellant argued that he has more than 665 hours if you include his Record of Employment from December 2015.

[7] Following the request for reconsideration, the Respondent maintained on August 4, 2016 that he did not have the required number of hours within his qualifying period to establish a claim for benefits.

[8] The Appellant then appealed on August 26, 2016 the decision to the *Social Security Tribunal of Canada* (the Tribunal).

[9] The Tribunal considered summarily dismissing the appeal because his issue had to be decided as a matter of law when dealing with undisputed facts and the information at hand did not demonstrate that he had met the basic qualifying requirement to establish a claim. The *Social Security Tribunal Regulations* (SST Regulations) states that before summarily dismissing an

appeal, the General Division of the Tribunal must give notice in writing to the claimant and allow them a reasonable period of time to make submissions.

[10] The Appellant was advised of the intention to summarily dismiss his appeal in a January 10, 2017 notice letter and requested submissions from him no later than February 10, 2017.

[11] The Appellant submitted information on January 13, 2017, January 16, 2017 and January 18, 2017 that is nonsensical to the issue under appeal. On January 20, 2017 the Appellant also submitted that his Record of Employment from November of 2015 show 601 hours and in January of 2016 show 48 hours which total 649 hours and that it should be enough for sickness benefits.

ISSUE

[12] The Tribunal must decide whether the appeal should be summarily dismissed.

THE LAW

[13] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[14] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[15] Subsection 7(2) of the Act stipulates that in order to qualify for employment insurance benefits, an insured person must (a) have experienced an interruption of earnings from employment, and (b) must also have acquired, in his qualifying period, at least the number of hours of insurable employment set out in the table within that subsection, in relation to the regional rate of unemployment where the person normally resides.

[16] Subsection 8(1) of the Act:

(1) Subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of

(b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

EVIDENCE

[17] The Appellant's qualifying period was established from December 20, 2015 to April 23, 2016 pursuant to paragraph 8(1)(b)of the Act because he qualified for a previous benefit period effective December 20, 2015.

[18] The minimum requirement for him to qualify to receive employment insurance benefits was 665 hours based on the rate of unemployment at the time of his application of 6.3% in the region where he resides.

[19] The Appellant accumulated 46 hours of insurable employment in his qualifying period.

SUBMISSIONS

[20] The Appellant submitted voluminous amounts of correspondence with the Tribunal. Unfortunately all the information was irrational and illogical and did not relate to the issue under appeal. At best the Appellant appears to be seeking to have the hours he used to establish a former claim for benefits combined with his new hours to establish another claim for benefits.

[21] The Respondent submitted that the Appellant's qualifying period as determined by paragraph 8(1)(b)of the Act is from December 20, 2015 to April 23, 2016. During that time he accumulated 46 hours of insurable employment whereas he needed 665 hours. Therefore by not accumulation enough hours in his qualifying period, he failed to demonstrate that he qualified to receive benefits pursuant to subsection 7(2) of the Act.

ANALYSIS

[22] As mentioned above, subsection 53(1) of the DESD Act states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success. The Tribunal reviewed the file and concluded that the Appellant's appeal with respect to the sufficiency of the insurable hours would have no reasonable chance of success.

[23] In compliance with section 22 of the SST Regulations, the Appellant was given the opportunity to provide further submissions by February 10, 2017 to demonstrate that his appeal had a reasonable chance of success.

[24] While it appears that the Appellant is seeking to have the hours he used to establish a former claim for benefits combined with his new hours to establish another claim for benefits, he did not provide any submissions to demonstrate that he had a reasonable chance of success. Nothing from the huge amount of information he provided the Tribunal explain why his case should not be summarily dismissed.

[25] First off, the Federal Court of Appeal confirmed the principle that subsection 8(1) of the Act provides for two possible qualifying periods. It specifically requires that the shorter of the two possibilities be chosen as the applicable qualifying period. (Long v. Canada (AG), 2011 FCA 99)

[26] In this case, the claimant's qualifying period was established from December 20, 2015 to April 23, 2016 pursuant to paragraph 8(1)(b)of the Act because he had qualified for a previous benefit period effective December 20, 2015.

[27] Secondly, the law is clear. Subsection 7(2) of the Act stipulates that in order to qualify for employment insurance benefits, an insured person must (a) have experienced an interruption of earnings from employment, and (b) must also have acquired, in his qualifying period, at least the number of hours of insurable employment set out in the table within that subsection, in relation to the regional rate of unemployment where the person normally resides.

[28] In this case, the Appellant resides in a region where the rate of unemployment was 6.3% at the time he applied for benefits and therefore the Appellant needed 665 hours to qualify to receive employment insurance benefits.

[29] Since he accumulated 46 hours of insurable earnings, a claim for benefits cannot be established under subsection 7 of the Act.

[30] In this case, the decision is not discretionary and there is no authority to deviate from subsection 7 of the Act. The Court has affirmed the principle whereby adjudicators are permitted neither to re write legislation nor to interpret it in a manner that is contrary to its plain meaning (Canada (AG) v. Knee, 2011 FCA 301).

[31] In Levesque 2001 FCA 304 and Pannu A-147-03, it states that the requirements of the Act do not allow any discrepancies or discretion when it comes to the issue of insurable hours no matter how sympathetic or unusual the circumstances.

[32] Consequently, the facts are clearly set out and the evidence in the documents indicates that he simply does not have sufficient hours to establish a claim.

[33] There is simply no evidence to demonstrate that in this case the Appellant satisfies the basic legal qualifying requirement of the Act.

CONCLUSION

[34] The Tribunal finds that the appeal has no reasonable chance of success; therefore the appeal is summarily dismissed

Paul J. Demers
Member, General Division - Employment Insurance Section