

Federal Court



Cour fédérale

Date: 20170321

Docket: T-1500-15

Citation: 2017 FC 297

Vancouver, British Columbia, March 21, 2017

PRESENT: The Honourable Mr. Justice Mosley

BETWEEN:

PATRICK DALEY

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] The applicant, Mr. Patrick Daley, applied under section 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7 for judicial review of a decision of the Social Security Tribunal—Appeal Division (SST-AD) dated July 24, 2015. The SST-AD dismissed Mr. Daley’s appeal of the decision of the Social Security Tribunal—General Division (SST-GD), which had refused his request for an extension of time to file a request for reconsideration under section 112 of the *Employment Insurance Act*, SC 1996, c 23 [EIA].

[2] Mr. Daley represented himself on this application. At the conclusion of the hearing, I advised him that his application would not be successful, gave him a brief explanation, and advised him that I would provide more extensive reasons in writing. These are those reasons.

[3] On October 30, 2008, Mr. Daley applied for and received employment insurance (EI) benefits under the EIA. On September 28, 2011, the Canada Employment Insurance Commission (Commission) issued a Notice of Decision and a Notice of Violation indicating that Mr. Daley had knowingly made false or misleading statements, as he did not report his earnings from May 2009 to September 2009 from his employer, Bell Telephone Company, while receiving regular EI benefits. As a result, the Commission imposed a penalty of \$1030.00 under the EIA.

[4] More than two years after the decision was communicated to Mr. Daley, on December 13, 2013, he filed a request for reconsideration of the Commission's decision dated September 28, 2011. His request for reconsideration was denied by the Commission on January 6, 2014, pursuant to paragraph 112 (1) (a) of the EIA. Mr. Daley appealed this decision to the SST-GD on February 13, 2014.

[5] A teleconference hearing was scheduled to be heard on November 10, 2014, which Mr. Daley failed to attend. On November 12, 2014, the SST-GD dismissed Mr. Daley's appeal for the following reasons: (i) the request for reconsideration was late; (ii) a reasonable explanation was not provided for the late request; (iii) Mr. Daley did not demonstrate a continuing intention to request a reconsideration; (iv) Mr. Daley did not show that he had an arguable case; and (v) prejudice to the other parties would be significant.

[6] On December 9, 2014, Mr. Daley filed an application requesting leave to appeal to the SST-AD. He indicated that he underwent a medical operation on December 10, 2014, and that he was in recovery at the time of the hearing on November 10, 2014. On June 2, 2015, the SST-AD granted Mr. Daley leave to appeal, but invited him to provide evidence on his inability to attend the hearing before the SST-GD on November 10, 2014. In particular, the SST-AD indicated that the dates provided by Mr. Daley regarding the timing of his medical operation made no sense.

[7] Mr. Daley did not file any additional evidence or submissions; therefore, the SST-AD decided the appeal based on the written record. On July 24, 2015, the SST-AD dismissed the appeal based on the fact that Mr. Daley failed to substantiate his arguments, and there was no breach of natural justice. As a result, Mr. Daley brought this application for judicial review of the SST-AD's decision. Initially, there was some confusion between the parties as to the court in which the application should be brought, i.e., this Court or the Federal Court of Appeal. That confusion caused some further delay before it was resolved but has no bearing on the merits of the application.

[8] I heard the application on March 8, 2017. At the outset of the hearing, Mr. Daley appeared to be under the mistaken impression that the Court could resolve his dispute with the Commission. As I explained to him during the hearing, that was not within the scope of the Court's jurisdiction on judicial review of the decision of the SST-AD.

[9] The sole issue in this application is to determine whether the SST-AD's decision to dismiss Mr. Daley's appeal of the decision of the SST-GD refusing an extension of time to file a request for reconsideration is unreasonable. Having considered the evidence and the oral and

written submissions of the parties, I am unable to find any basis upon which to justify the Court's intervention.

[10] The SST-AD's decision is reasonable as it is justifiable, transparent and intelligible. Although brief, the reasons made clear the process that the Tribunal Member had followed in ruling on Mr. Daley's appeal of the SST-GD's decision: *Dunsmuir v New Brunswick*, 2008 SCC 9, [2008] SCJ No 9 at paras 47–49.

[11] The crux of the matter on this application is whether Mr. Daley has demonstrated that he had met the criteria for an extension of time to request reconsideration under section 112 of the EIA. Pursuant to paragraph 112 (1) (a) of the EIA, Mr. Daley had 30 days after the day he received the Commission's decision to request reconsideration of that decision. Under paragraph 112 (1) (b) of the EIA, at the conclusion of 30 days, the Commission has discretion to allow for further time to request reconsideration.

[12] Mr. Daley sought to bring new medical evidence to this Court's attention to explain the conflicting dates regarding his medical operation at the time of the SST-GD hearing on November 10, 2014. The new evidence includes a clinical note dated November 10, 2014, and two X-ray and ultrasound medical notes dated April 30, 2015.

[13] The SST-AD hearing took place on July 24, 2015. As such, Mr. Daley had the opportunity to file this evidence with the Tribunal to support his case. However, he failed to do so. The new medical evidence does not fall within any of the exceptions to the principle that

fresh evidence is not admissible on judicial review, such as to address a procedural fairness issue or to provide background information, which would allow for their receipt in this Court.

[14] The new medical evidence was not before the decision maker and it goes to the merits of the matter; accordingly, it is not admissible in this application for judicial review: *Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency*, 2012 FCA 22, [2012] FCJ No 93 at paras 19–20, cited in *Connolly v Canada (Attorney General)*, 2014 FCA 294, [2014] FCJ No 1237 at para 7.

[15] I understand that Mr. Daley has had a number of serious medical problems that required his attention and medical care over the course of the past decade. However, he waited over two years before filing a request for reconsideration. He also failed to provide any evidence to substantiate his arguments that an extension of time was warranted. As such, he has not demonstrated diligence in pursuing his cause. In the circumstances, I am not persuaded that the SST-AD's decision to dismiss Mr. Daley's appeal is unreasonable. For that reason, this application for judicial review cannot succeed.

[16] Mr. Daley has asked the Court to consider the "interests of justice" in deciding this application. There are many instances in which the equities lie in favour of an applicant who has missed a filing date and the Court will frequently exercise its discretion to rule accordingly. This is not such a case.

[17] As costs were not requested, none will be awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that the application is dismissed without costs.

“Richard G. Mosley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1500-15

STYLE OF CAUSE: PATRICK DALEY v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 8, 2017

JUDGMENT AND REASONS: MOSLEY, J.

DATED: MARCH 21, 2017

APPEARANCES:

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FOR THE APPLICANT
(ON HIS OWN BEHALF)

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FOR THE RESPONDENT

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FOR THE RESPONDENT