

Citation: *S. G. v. Canada Employment Insurance Commission*, 2015 SSTAD 957

Date: August 5, 2015

File number: AD-14-608

APPEAL DIVISION

Between:

S. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

Decision by: Shu-Tai Cheng, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] The Applicant applies to the Social Security Tribunal of Canada (Tribunal) for leave to appeal the decision of the General Division (GD) of the Tribunal issued on November 6, 2014. The Board dismissed the claimant's appeal where the Commission had determined that the claimant lost her employment by reason of her own misconduct and imposed a disqualification.

[2] The Applicant received the decision of the GD on November 11, 2014, and on December 9, 2014, her representative filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal. Therefore, the Application was filed within 30 days of receiving the Board decision.

[3] The Application cited as the reasons for appeal failure by the GD to observe principles of natural justice and the duty of procedural fairness and erroneous findings of fact made in a perverse or capricious manner without regard for the material before it.

ISSUES

[4] The Tribunal must decide if the appeal has a reasonable chance of success.

THE LAW

[5] According to subsections 56(1) and 58(3) of the DESD Act, "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and "the Appeal Division must either grant or refuse leave to appeal".

[6] Subsection 58(2) of the DESD Act provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

[7] Subsection 58(1) of the DESD Act states that the only grounds of appeal are the following:

- (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 made in a perverse or capricious manner or without regard for the material before it.

SUBMISSIONS

[8] The Applicant made extensive submissions in her Application. Her primary argument is that the GD failed to take into consideration relevant material evidence, namely, seven (7) documents that were in evidence and also failed to provide reasons why this evidence was not considered or was not relevant. The Applicant asserted that the GD decision only made reference to evidence provided by the employer. The Applicant's secondary argument was that the GD failed to consider the oral evidence given by the Applicant and the employer acknowledging that there were ongoing problems between a supervisor and the Applicant. The Applicant's further argument was that the GD relied heavily on hearsay evidence, although very little weight should have been given to this evidence and it was rebutted by the Applicant's oral testimony. In addition, the Applicant argued that the GD failed to make a finding on the issue of credibility and violated section 114 of the *Employment Insurance Act* (EI Act) which requires full written reasons on all issues.

ANALYSIS

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

[10] The Applicant's submissions suggest possible erroneous finding of facts or breach of natural justice, in particular, by the GD failing to take into consideration relevant material evidence.

[11] The Tribunal notes that the teleconference hearing before the General Division was audio recorded. The Applicant gave testimonial evidence during the hearing for more than forty (40) minutes.

[12] In terms of the evidence before the General Division, the decision noted, at page 4:

EVIDENCE

[13] Letters and emails from Fermar Paving, Miller Paving, Aecon Utilities and the City of Toronto all expressing concerns about the claimant's behaviour on job sites.

[14] A copy of the employer's workplace violence and harassment policy as well as the employee acknowledgement form signed by the claimant.

[13] In the "Analysis" section of the GD decision, there is reference to the employer's evidence, at paragraphs [23] to [25] and [28] and [29], on pages 6 and 7.

[14] However, there appears to be no reference to Appellant's evidence, documentary or oral, in the GD decision.

[15] The Tribunal has considered the Applicant's submissions that the General Division failed to observe principles of natural justice and the duty of procedural fairness and made erroneous findings of fact in a perverse or capricious manner without regard for the material before it, by reason of not having considered the Applicant's evidence in arriving at its decision.

[16] In light of my review of the decision of the General Division and the apparent absence of any reference to the evidence of the Applicant, I find that the Application sets out reasons which fall into the enumerated grounds of appeal and I am satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[17] The Application is granted.

[18] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[19] I invite the parties to make written submissions on whether a hearing is appropriate and, if it is, the form of the hearing and, also, on the merits of the appeal.

Shu-Tai Cheng
Member, Appeal Division