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

Citation: *G. A. v. Canada Employment Insurance Commission*, 2016 SSTADEI 251

Tribunal File Number: AD-15-1340

BETWEEN:

G. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division – Appeal Decision

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: May 9, 2016

Canada

REASONS AND DECISION

INTRODUCTION

[1] On April 7, 2016, the Appeal Division (AD) of the Social Security Tribunal of Canada (Tribunal) granted leave to appeal on the grounds that the GD may have based its decision on an error of law, erroneous findings of fact, or errors of mixed fact and law.

[2] The Tribunal requested the parties' submissions on the mode of hearing, whether one is appropriate and, also, on the merits of the appeal.

[3] The Respondent (Commission) filed submissions which recommend that the appeal be allowed or, in the alternative, that the matter be returned to the GD for reconsideration.

[4] In light of the Respondent's submissions, it is unnecessary for the Appellant to file further submissions.

[5] This appeal proceeded on the basis of the record for the following reasons:

a) The lack of complexity of the issue(s) under appeal;

b) The AD Member has determined that no further hearing is required; and

c) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[6] Whether the GD made an error of law, erroneous findings of fact or an error of mixed fact and law in arriving at its decision.

[7] If yes, the AD of the Tribunal must decide whether it should dismiss the appeal, give the decision that the GD should have given, refer the case to the GD for reconsideration or confirm, rescind or vary the decision of the GD.

LAW AND ANALYSIS

[8] Subsection 58(1) of the *Department of Employment and Social Development Act* (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.

[9] Leave to appeal was granted on the basis that the Appellant had set out reasons which fall into the enumerated grounds of appeal and that at least one of the reasons had a reasonable chance of success, specifically, under paragraphs 58(1)(b) and (c) of the DESD Act.

[10] In particular, the decision granting leave to appeal stated:

> [13] The issue before the GD was the Applicant's disqualification for voluntarily leaving employment without just cause pursuant to sections 29 and 30 of the EI Act.
>
> [14] The GD stated the correct legislative provisions when considering voluntary leaving and just cause. It found that the Applicant left her job without just cause within the meaning of the Act.
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> [15] The Application refers to many examples of (alleged) errors in the findings of facts upon which the GD based its decision. These include but are not limited to the reasons she left her job, the time it took to provide a medical note after being asked to by the Commission, the severity of her headaches and pain, and the requirement to look for other work before leaving her job when the problem was her inability to work because of her medical problems.
>
> [16] The Applicant did not make specific submissions on the error of law that she relies upon, but she did reference the Commission having conceded to the appeal and consented to remove the disqualification that had been imposed.

> [17] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. Here, the Applicant has identified grounds and reasons for appeal which fall into the enumerated grounds of appeal, specifically under paragraphs 58(1)(b) and (c) of the DESD Act.
>
> [18] On the ground that there may be an error of law, erroneous findings of fact, or errors of mixed fact and law, I am satisfied that the appeal has a reasonable chance of success.

[11] The Respondent agrees that there is a reviewable error in the GD decision. Therefore, it recommends that the appeal be allowed. Alternatively, it requests that the matter be returned to the GD for reconsideration pursuant to subsection 59(1) of the DESD Act.

[12] After the Appellant produced medical evidence (GD2A-1), the Respondent was of the opinion that having regard to all the circumstances, the Appellant had shown that she exhausted all reasonable alternatives prior to leaving. However, as she had appealed the matter to the Tribunal, it was too late for the Commission to exercise its authority to amend its earlier decision. The Respondent had conceded the appeal before the GD by way of written representations.

[13] The Appellant referred to a number of errors upon which the GD based its decision. They include that that the medical note which she provided confirmed her diagnosis in 2011, stated that she did not find relief from her symptoms despite treatment and that she was unable to engage in full time employment, but it did not recommend that she leave her employment for medical reasons. The GD found that the medical note contained no directive to leave her employment and based its conclusion that she did not show that there was no other reasonable alternative to leaving on this finding.

[14] The Federal Court of Appeal, in *Brisebois v. Canada (AG)*, 1997 CanLII 5975 (FCA), held that requiring a medical certificate to justify a claimant's contention that she had no alternative but to quit her employment was an error.

[15] Therefore, I find that the GD decision was based on an error of law and an error of mixed fact and law.

[16] Given these errors in the GD decision, the AD is required to make its own analysis and decide whether it should dismiss the appeal, give the decision that the GD should have given, refer the case to the GD, or confirm, reverse or modify the decision

[17] Considering the submissions of the parties, my review of the GD decision and the appeal file, I allow the appeal. Further, because this matter does not require new evidence or a hearing before the GD, I am giving the decision that the GD should have given.

[18] The appeal is allowed, and the disqualification for voluntarily leaving employment is removed.

CONCLUSION

[19] The appeal is allowed.

Shu-Tai Cheng
Member, Appeal Division