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

Citation: *J. D. v. Canada Employment Insurance Commission,* 2017 SSTADEI 413

Tribunal File Number: AD-17-365

BETWEEN:

J. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: November 29, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] On January 11, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Applicant was disqualified from receiving benefits under the *Employment Insurance Act* (Act) as a result of her own misconduct, as per section 30 of the Act. The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on May 1, 2017.

ISSUE

[2] The Member must decide whether the appeal has a reasonable chance of success.

THE LAW

[3] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (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."

[4] According to subsection 58(1) of the DESD Act, 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.

[5] Subsection 58(2) of the DESD Act states that, "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

SUBMISSIONS

[6] The Applicant submits that the General Division made several errors. One of the errors the Applicant argues is that the General Division found her to have contravened company policy by unblocking seats on January 25, 2016, whereas the Applicant disputes this and states that she had not in fact unblocked the seats (AD1-12). She argues that this finding was made without proper regard to the Applicant's evidence and that it constitutes an erroneous finding of fact that the General Division made in a perverse or capricious manner or without regard to the evidence before it per paragraph 58(1)(*c*) of the DESD Act.

ANALYSIS

[7] The General Division referred to the Appellant's testimony at paragraph 20(h) and at paragraph 33 where, according to the decision, "the Appellant stated that she unblocked the two seats 31AB, but that 'agent 0918' had also unblocked seats (the seats 2AB and 2C3C) and there was 'no discipline for her'." I have reviewed the audio record of the hearing and have not discovered an instance where the Applicant admitted to unblocking the seats, nor did I understand any of the Applicant's testimony to have the necessary implication that she had "unblocked seats."

[8] The General Division also stated at paragraph 29 that the Applicant did not deny unblocking the seats in her application for Employment Insurance benefits (and the General Division references the Applicant's Questionnaire at GD3-8 to GD3-14 and her Request for Reconsideration at GD3-30 to GD3-32). I have reviewed this evidence as well and note that, in response to Question 2, the final incident of misconduct, she states the following: "JAN 25/2016: Manager blames me that I unblocked the seats on the WG452 flight even though the procedure does not allow you to do so" (GD3-8). In response to Question 6, which asks that she list every incidence of this kind of misconduct, she responds as follows: "G. A. blames me for unblocking the seats on WG452 which I didn't." This is identified as the January 25, 2016, incident (GD3-11).

[9] The telephone log notes from her conversation with the Commission records the following: "She did use the seats 31A and 31B for a couple that wanted to sit together and she

thought they were her last passengers. She says that the seats were unblocked at the moment she used them and this row is for passengers" (GD3-26). Again, this does not appear to be an admission that the Applicant unblocked the seats.

[10] The General Division is correct that the Applicant does not deny unblocking the seats. However, the reconsideration application is not framed in those terms and does not specifically address the seat-unblocking incident, either to confirm or deny responsibility for unblocking seats.

[11] It appears on the face of the General Division decision that the General Division may have understood the Applicant to have contradicted herself and to have admitted to having unblocked the seats. If the General Division misapprehended the Applicant's evidence, then it is possible that the General Division's finding that she did in fact unblock the seats may be an erroneous finding of fact made in a perverse of capricious manner or without regard to the material before it, per paragraph 58(1)(*c*) of the DESD Act.

[12] Given this finding, it is unnecessary to consider the other grounds raised by the Applicant.

CONCLUSION

[13] The Application is granted.

[14] This decision does not prevent the Applicant from arguing any or all of the grounds of appeal.

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

Stephen Bergen
Member, Appeal Division