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

Citation: *Cariboo Hearing Services Inc. v. Canada Employment Insurance Commission,* 2017 SSTADEI 441

Tribunal File Number: AD-17-855

BETWEEN:

Cariboo Hearing Services Inc.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

T. F.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: December 18, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] On September 25, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the appellant in that proceeding (the "Claimant") had voluntarily left her employment with just cause. The Claimant's former employer, who was an added party to the General Division proceedings (the "Employer") filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on November 1, 2017.

ISSUE

[2] Does the appeal have 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 be brought only if leave to appeal is granted and the Appeal Division must either grant or refuse leave to appeal.

[4] 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.

[5] According to subsection 58(1) of the DESD Act, the following are the only grounds of appeal:

> **(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

[6] The Employer argues that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it.

[7] In support of this argument, the Employer states that the General Division relied on two documents, namely, the guidelines from the former Board of Hearing Aid Dealers and Consultants of BC (the "BC Guidelines") and a letter from the College of Speech and Hearing Professionals of BC dated September 9, 2017 (the "College letter") which were, in the view of the Employer, irrelevant.

[8] The Employer also submits that the General Division ignored evidence that the manner in which she conducted her practice and supervised her student had been approved by the College of Speech and Hearing Professionals of BC (the "College").

[9] Finally, the Employer submits that the General Division failed to consider that the Claimant had been threatening to quit her job prior to raising any concern about the student's supervision.

[10] No submissions were filed by the Respondent, the Canada Employment Insurance Commission, or by the Claimant.

ANALYSIS

[11] The Employer considers two of the documents in evidence at the General Division to have been irrelevant:

- The BC Guidelines document is said to be irrelevant because it issued from the Board of Hearing Aid Dealers and Consultants, a Board which no longer exists and whose policies and guidelines were already outdated at the time the Claimant developed concerns with the employer's practices.

- The College letter is said to be irrelevant because it represents an update to policy and guidelines that occurred after the time of the Claimant's concerns and after she left her employment.

[12] The Claimant had not adduced the policies or guidelines from the former Board of Hearing Aid Dealers and Consultants (the "Board"). However, she had submitted a June 9, 2009, letter from the former Board directed to the Claimant's former supervisor (and the Employer's former partner) that describes the responsibilities of a student supervisor. Presumably, the Employer's concern relates to this document.

[13] The General Division acknowledged the Employer's concern that the June 9, 2009, letter would have applied the guidelines and policies of the defunct Board. It accepted that this Board no longer existed and that its policies no longer applied. However, the General Division still accepted that the June 9, 2009, letter had evidentiary value because it was consistent with the 2010 declaration that the College required to be signed by the student and co-signed by her supervisor. That declaration states that the declarant has worked under a program of *supervision as advised by the College Registrar*.

[14] The Employer suggests that the September 9, 2017, letter from the College is irrelevant and should not be relied upon because it references policies and guidelines that supersede the actual policies and guidelines in effect for the relevant period (the "Relevant Policies"). However, the Employer has not pointed to any material differences between the September 9, 2017, letter and the Relevant Policies that would suggest that the General Division erred in taking the letter into account.

[15] I note that there are some differences between the position of the College set forth in the September 9, 2017, letter and the Relevant Policies as evidenced by Guidelines of the College of Speech and Hearing Health Professionals of BC provided by the Claimant (and which state on their face that they were most recently revised on June 12, 2015).

[16] The September 9, 2017, letter states as follows:

> During the **Close Supervision stage** (first 330 of 660 practicum hours), the supervisor must be on site 100% of the time with the Student-HIP and must observe the student for the first 30 clinic hours.

[17] To contrast, the College guidelines of 2015 describe 140 hours of constant observation, 350 hours of close supervision, and then 350 hours of general supervision. In the first two phases (490 hours total), the supervisor would have to be on site 100 percent of the time.

[18] Both the September 9, 2017, letter and the June 2015 policy statement require a student to notify the registrar in advance of any proposed change in supervisor/supervision plan.

[19] To the extent that the September 9, 2017, letter identifies supervision requirements that differ from the previous policy, they appear on their face to be less stringent than those reflected in the policy in effect at the time the Claimant expressed her concern. It is difficult to see how the General Division's consideration of the September 2017 letter could have been prejudicial to the Employer.

[20] The current requirements, as reflected in the September 9, 2017, letter remain relevant to the extent that they reflect a constancy in certain of the Guidelines of the College of Speech and Hearing Health Professionals of BC.

[21] To my mind, the Employer's real issue is with the relative weight the General Division gave to the various evidentiary elements. However, it is not my role to reweigh the evidence. It is clear on the face of the decision that the General Division justified the manner in which it assessed the evidence and that it relied on the evidence to draw appropriate inferences. The Employer has not raised an arguable case that the General Division erred in considering any of the documents in evidence.

[22] The Employer has also argued that the General Division ignored the Employer's evidence respecting how she confirmed that her practices were acceptable to the College. In its decision, the General Division reviews this evidence at paragraphs 24, 29, and 33, and in its analysis at paragraph 43. The General Division accepted that the Employer called the College and that she believed that she was in compliance with College guidelines and policy. However, in considering whether the Claimant's concerns with the Employer's practices were justified, the General Division chose to give more weight to documentary evidence, such as the College's

actual policies. I do not find that the Employer's evidence was either ignored or misunderstood. As noted earlier, the weighing of evidence is the prerogative of the General Division as the trier of fact.

[23] The Employer argues that the General Division ignored evidence that the Claimant had threatened to quit and start her own business. The General Division addresses this at paragraphs 17, 18, 24, 29 and 37 of its decision. In fact, the General Division indicated that it gave significant weight to the November 1, 2015, letter from the Employer to the extent that it confirms the Claimant's intention to quit if things did not change. This assisted the General Division's determination that the Claimant had voluntarily left her employment as opposed to having been dismissed.

[24] However, the General Division's determination that the Claimant had no reasonable alternative to leaving was related to its finding that she left because she was expected by the Employer to act in a manner contrary to the standards of the College, "notwithstanding the Employer's suggestion that the Claimant was generally unhappy with things at the office." The Employer has not made out an arguable case that the General Division somehow ignored or misunderstood its evidence that the Claimant had threatened to quit or may have had other reasons for quitting, nor that the General Division's finding that her leaving was motivated by her professional concern was either capricious or perverse.

[25] I have reviewed the record of proceedings before the General Division, but I have not identified any other evidence that was either misconstrued or overlooked.

[26] For all the above reasons, I find that the appeal has no reasonable chance of success.

CONCLUSION

[27] The Application is refused.

Stephen Bergen
Member, Appeal Division