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

Citation: *Z. W. v. Canada Employment Insurance Commission*, 2017 SSTADEI 444

Tribunal File Number: AD-17-654

BETWEEN:

**Z. W.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

# SOCIAL SECURITY TRIBUNAL DECISION
## Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: December 22, 2017

Canada

## REASONS AND DECISION

## INTRODUCTION

[1] On August 30, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Applicant had voluntarily left his employment without just cause as per paragraph 29(*c*) of the *Employment Insurance Act* (Act). As a result, the General Division found that the Applicant was disqualified from receiving benefits under section 30 of the Act. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on October 3, 2017.

## ISSUE

[2] I 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 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. The only grounds of appeal are those set out in subsection 58(1) of the DESD Act. They are as follows:

> (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

[5] The Applicant submits 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 for the material before it. In particular, the Applicant argues that the General Division gave little weight to the amended Record of Employment ("ROE") that indicated he had been dismissed for the reason that "Employers have been known to amend ROEs in an effort to avoid the time and effort they would have to put into responding to an investigation by a provincial Labour Standards agency." The Applicant does not accept that this is a good reason for discounting the evidence.

[6] The Applicant submits that the General Division failed to observe a principle of natural justice. The Applicant argues that he did not fully understand the proceedings owing to his language difficulty and the use of an interpreter intermediary, that this impeded his ability to know the case to be made, and that this "language confusion" resulted in the General Division's findings that his testimony was inconsistent.

## ANALYSIS

[7] At the hearing, the General Division had a ROE dated February 17, 2016, and an amended ROE dated March 4, 2016, both from the same employer. The second ROE is said to amend or replace the original ROE with serial no. RE0 S11989580. Each ROE indicates that the reason for its issuance is "Quit." The difference between the first and the second ROE is that the second includes an additional $915.00 in pay, which the Applicant testified was termination pay.

[8] The Applicant testified to the existence of an additional ROE and, at the request of the General Division, provided a third and final ROE dated August 5, 2016. Like the second ROE, the final ROE is said to amend or replace the ROE with serial no. RE0 S11989580. The only apparent difference between this final ROE and the second ROE is the reason given for its issuance. The final ROE indicates that the reason for the ROE was "Dismissed."

[9] At least part of the General Division's justification for disregarding the final ROE is its own view that employers have been known to amend such documents to avoid what amounts to inconvenience.

[10] The ROE is generally of some significance in the determination of the reason for a claimant's separation from employment. If the General Division's finding that the Applicant voluntarily left his employment was influenced by its rejection or devaluation of the final ROE, and if that rejection or devaluation was based in whole or in part on irrelevant considerations, then the General Division may have based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard to the material before it, as per paragraph 58(1)(*c*).

[11] I find therefore that the appeal has a reasonable chance of success.

[12] Having found a reasonable chance of success in relation to one ground, it is unnecessary for me to consider any other grounds of appeal raised by the Applicant (*Mette v. Canada* [*Attorney General*], 2016 FCA 276).

**CONCLUSION**

[13] The Application is granted.

[14] The Applicant is not restricted from arguing any, or additional, grounds of appeal in pursuing his appeal on the merits of the case.

[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