



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. C. v. Canada Employment Insurance Commission*, 2018 SST 70

Tribunal File Number: AD-17-663

BETWEEN:

B. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: January 24, 2018

REASONS AND DECISION

INTRODUCTION

[1] On August 30, 2017, the General Division of the Social Security Tribunal of Canada determined that the Applicant had voluntarily left his employment without just cause. The Applicant filed an application for leave to appeal with the Tribunal's Appeal Division on October 10, 2017.

ISSUE

[2] Does the Applicant's 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 Applicant submits that the General Division made certain errors of fact, including that he sold his condominium before moving to British Columbia (BC) and that he had not sought work in BC before moving. He also suggests that the General Division was incorrect in asserting that he did not take pain medication other than glucosamine as a preventative measure.

[7] The Applicant also appears to disagree with the General Division's finding that the employer was able to accommodate him such that he did not have to lift heavy items. He understands the legal test to require that he provide medical evidence to substantiate the claim, demonstrate that he had attempted to reach an accommodation with his employer, and prove that he had attempted to find alternative employment. The Applicant argues that he had done all three. He has not specified in what manner he considers the General Division to have erred, but it appears that he is arguing that the General Division made a mixed error of fact and law.

ANALYSIS

[8] At paragraph 51, the Tribunal found that "the Claimant did not attempt to find other work in BC, knowing that he was making a family decision to move to BC, and that he gave a one-month notice to his employer."

[9] The Applicant provided evidence that he had been seeking work in Saskatoon as early as July, that he had been willing to accept a junior administrator position in Saskatoon to which he had applied (which he said was just one example), and that he had been "definitely looking for other jobs before he quit." However, the General Division found that "[the Applicant] did not look for work in BC prior to his move," and apparently found it to be significant that the Applicant had not sought work in BC, *specifically*. The General Division stated that it "realizes the [Applicant] stated he looked for work in Saskatoon. However he did not look for work in BC and he had already told his employer he was moving to BC." The Tribunal found that looking for and securing employment in BC, prior to voluntarily leaving was a reasonable alternative.

[10] I have reviewed the audio recording from the hearing and I note that the Applicant testified that he "did look for employment in BC [recording at 33 minutes 08 seconds] and even

in Saskatoon before [he] wanted to move... In the summer, [he] started looking for a job in the summer, locally and in BC area as well.”

[11] The General Division did not challenge this statement or suggest that the Applicant was not credible. It is the General Division’s role to assign such weight as it considers appropriate to the evidence and it may reject evidence entirely if it does not accept it as credible. However, the General Division did not reject the credibility of the Applicant or of this evidence, so it is presumptively true. The General Division may not make a finding of fact that is unfounded on the evidence and that, in fact, is contrary to the only available evidence.

[12] The identification of reasonable alternatives is integral to the issue of “just cause,” and the General Division’s determination that the Applicant should have sought and obtained work in BC before leaving his job may have incorporated a misunderstanding as to the nature and extent of the Applicant’s job search. Therefore, it is arguable that the General Division based its decision on an erroneous finding of fact, namely that the Applicant had not looked for work in BC.

[13] I find that the Applicant’s appeal has a reasonable chance of success.

[14] The Applicant also raised concerns with other findings of fact and the manner in which the General Division analyzed those facts. As I have found a reasonable chance of success in relation to one ground, it is not necessary that I consider each of the individual grounds of appeal raised by the Applicant.

[15] The Federal Court of Appeal in *Mette v. Canada (Attorney General)*, 2016 FCA 276 noted that “[subsection 58(2)] does not require that individual grounds of appeal be dismissed. Indeed, individual grounds may be so interrelated that it is impracticable to parse the grounds so that an arguable ground of appeal may suffice to justify granting leave.”

CONCLUSION

[16] The application for leave to appeal is granted.

[17] The Applicant may argue any or additional grounds of appeal in his appeal on the merits of the case.

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

Stephen Bergen
Member, Appeal Division