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

[TRANSLATION]

Citation: *M. B. v. Canada Employment Insurance Commission*, 2018 SST 65

Tribunal File Number: AD-17-485

BETWEEN:

M. B.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: January 23, 2018

Canada

DECISION AND REASONS

DECISION

[1] Leave to appeal the June 22, 2017, decision of the General Division of the Social Security Tribunal of Canada is refused.

OVERVIEW

[2] The Applicant, M. B., applied for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), denied the application because the Applicant had voluntarily left his employment when doing so was not his only reasonable alternative.

[3] The Applicant argues that he was hired to fill a full-time representative position and that, on the second day of work, he found out that the job he wanted, as a delivery driver, was part time. He left his position to concentrate on his job search.

[4] The Applicant appealed the Respondent's decision to deny him benefits. The General Division found that the Applicant did not exhaust all reasonable alternatives available to him and did not prove that the terms and conditions respecting his salary or wages had changed. He did not have just cause for voluntarily leaving his employment.

[5] The Applicant argues in his application for leave to appeal that the General Division made an important error regarding the facts by finding that the training would have lasted 30 days, when month-long training was neither guaranteed nor offered.

[6] The appeal does not have a reasonable chance of success because the General Division did not make an erroneous finding of fact in a perverse or capricious manner or without regard for the material before it.

ISSUE

[7] Could it be argued that the General Division based its decision on the finding that the training was going to last one month, and that it made that finding in a perverse or capricious manner or without regard for the material before it?

ANALYSIS

[8] An applicant must seek leave to appeal a decision made by the General Division. The Appeal Division must either grant or refuse leave to appeal, and an appeal may be brought only if leave is granted.[1]

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there a ground on which the appeal could succeed?[2]

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success[3] based on a reviewable error.[4] The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

Could it be argued that the General Division erred by basing 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?

[11] According to the Applicant, the General Division decision [translation] "mentioned that there would be a 30-day training period" and this finding is erroneous because there [translation] "was no month-long training guaranteed or offered."

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[1] *Department of Employment and Social Development Act* (DESDA) at subsections 56(1) and 58(3).
[2] *Osaj v. Canada (Attorney General)*, 2016 FC 115, at paragraph 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208, at paragraph 36; *Glover v. Canada (Attorney General)*, 2017 FC 363, at paragraph 22.
[3] DESDA at subsection 58(1).
[4] DESDA at subsection 58(2).

[12] However, on reading the General Division decision, I find that the General Division did consider the evidence on file and did not ignore any evidence.

[13] The Applicant testified that he began a month-long training program.[5] Month-long training is mentioned in the appeal file.[6] The General Division's finding that the Applicant could have continued his employment while undergoing the training was not made in a perverse or capricious manner.

[14] The General Division found that a reasonable alternative would have been for the Applicant to continue in the position and to wait until he found other employment before leaving.

[15] I have also reviewed the evidence on file. There is no indication that the General Division overlooked or misconstrued relevant evidence. I am also of the opinion that the General Division did not fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law or erroneous findings of fact made by the General Division in a perverse or capricious manner or without regard for the material before it.

[16] Although the Applicant is dissatisfied with the General Division's findings, which are based on the evidence above, the General Division considered the relevant evidence and did not err.

[17] In light of this, I find that the appeal has no reasonable chance of success.

CONCLUSION

[18] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division

[5] General Division decision at paragraph 8(n) and Applicant's testimony at the hearing (between 14:00 and 15:00 of the hearing recording).
[6] Appeal file, GD3-39.