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

Citation: *S. K. v. Canada Employment Insurance Commission*, 2018 SST 183

Tribunal File Number: AD-17-894

BETWEEN:

S. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: February 26, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant (Claimant) tendered his resignation on September 15, 2016, and left his employment on October 7, 2016. His reasons for leaving included hand pain from a prior injury, and certain demands and restrictions from his employer that he considered to be unreasonable. When he applied for Employment Insurance benefits, the Canada Employment Insurance Commission (Commission) determined that he did not have just cause because leaving his employment was not his only reasonable alternative. As a result, his application for benefits was denied. His reconsideration request was likewise denied.

[3] He appealed to the General Division of the Social Security Tribunal, but his appeal was dismissed. The General Division stated that the Claimant had not exhausted all of his options before quitting. The Claimant is seeking leave to appeal from the Tribunal's Appeal Division.

[4] I accept that the Claimant has a reasonable chance of success on appeal. The *Employment Insurance Act* (the Act) states that "just cause" for voluntarily leaving an employment exists if the Claimant has no reasonable alternative to leaving. The General Division may have actually applied a more stringent standard that is not supported by the Act and it is therefore possible that the Tribunal misapplied the test for just cause and erred in law.

ISSUE

[5] Is there an arguable case that the General Division erred in law in applying a more stringent legal test for just cause?

ANALYSIS

General Principles

[6] The General Division is required to consider and weigh the evidence that was before it and to make findings of fact. It is also required to consider the law. The law would include the statutory provisions of the Act and the *Employment Insurance Regulations* (Regulations) that are relevant to the issues under consideration, and could also include court decisions that have interpreted the statutory provisions. Finally, the General Division must apply the law to the facts to reach its conclusions on the issues that it must decide.

[7] The appeal to the General Division was unsuccessful and the application now comes before the Appeal Division. The Appeal Division is permitted to interfere with a General Division decision only if the General Division has made certain types of errors, which are called "grounds of appeal." Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states that 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; and
>
> 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.

Unless the General Division erred in one of these ways, the appeal cannot succeed, even if the Appeal Division disagrees with the General Division's conclusion and the result.

[8] At this stage, I must find that there is a reasonable chance of success on one or more grounds of appeal in order to grant leave and allow the appeal to go forward. A reasonable chance of success has been equated to an arguable case.[1]

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[1] *Canada (Minister of Human Resources Development) v. Hogervorst* 2007 FCA 41; *Ingram v. Canada (Attorney General)*, 2017 FC 259.

[9] I recognize that the Claimant directed his arguments to concerns with natural justice and erroneous findings of fact. He did not argue an error of law. Nonetheless, I consider it to be expedient to deal with this application on the basis of an error of law on the face of the record.

Issue: Is there an arguable case that the General Division erred in law in applying a more stringent legal test for just cause?

[10] A claimant may be disqualified from receiving benefits under s. 30(1) of the Act if the claimant left their employment without just cause. Paragraph 29(*c*) of the Act states that "just cause" exists where a claimant has no reasonable alternative to leaving having regard to all the circumstances.

[11] Just cause requires that there be "no *reasonable* alternative"(emphasis added). The General Division acknowledges the s. 29(*c*) interpretation at paragraph 32 but it is not clear that it applied it correctly. At paragraph 43, the General Division found that the Claimant did not "exhaust all options" and that he "did not determine all available options."

[12] "Available options" are not necessarily equivalent to "reasonable alternatives." If the General Division's application of the test is such as to require the Claimant to meet a higher standard than is required by s. 29(c) then this would be an error of law under s. 58(1)(*b*) of the DESD Act.

[13] I find the Claimant has a reasonable chance of success on appeal.

[14] Given my finding above, it is not necessary that I consider the other issues or arguments raised by the Claimant.[2]

CONCLUSION

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

[16] The Claimant is free to argue any additional grounds of appeal at his appeal hearing on the merits.

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[2] *Mette v. Canada (Attorney General*), 2016 FCA 276.

[17] 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

REPRESENTATIVES:	S. K., Self-represented