



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. Z. v. Canada Employment Insurance Commission*, 2018 SST 187

Tribunal File Number: AD-17-628

BETWEEN:

R. Z.

Applicant

and

Canada Employment Insurance Commission

Respondent

and

Gap Canada

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: February 27, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant (Claimant) resigned from his employment on September 24, 2016, after citing concerns about verbal harassment from his manager. The Canada Employment Insurance Commission (Commission) denied his claim for benefits on the basis that leaving his employment was not his only reasonable alternative. The Commission reconsidered its decision at the Claimant's request, but its decision remained unchanged.

[3] The Claimant appealed to the General Division of the Social Security Tribunal. The General Division did not accept that the Claimant had established circumstances that amounted to harassment, or that the employer was primarily responsible for the antagonism that may have existed between the General Manager and the Claimant. Nor did the General Division accept that the employer was trying to pressure him to quit. The General Division confirmed that the Claimant had reasonable alternatives to leaving, namely, he could have sought to resolve his complaint with the district manager, explored the possibility of a transfer, or secured other employment prior to leaving. Therefore, the General Division dismissed the appeal.

[4] The Claimant seeks leave to appeal the dismissal on the ground that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. However, his application does not reveal any claim of unfairness in the appeal process. He is principally concerned with the General Division's findings of fact and its conclusion.

[5] The Claimant has no reasonable chance of success. I have been unable to discern any bias or procedural error, any error of law, or any finding of fact made in a perverse or capricious manner or without regard for the evidence.

ISSUES

[6] Is there an arguable case that the General Division acted in a manner that was biased against the Claimant and thus failed to observe a principle of natural justice?

[7] Is there an arguable case that the General Division made an error of law?

[8] Is there an arguable case 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?

ANALYSIS

General Principles

[9] The General Division is required to consider and weigh the evidence that is before it and to make findings of fact. It is also required to apply the law. The law would include those provisions of the *Employment Insurance Act* (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.

[10] 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.”

[11] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) 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; 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.

[12] 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.

[13] 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

[14] In a letter dated January 10, 2018, I requested that the Claimant clarify the grounds on which he was seeking leave and that he explain how the General Division erred in relation to the grounds. The Claimant responded with an email of January 20, 2018, in which he sought to explain again why he quit without exploring the alternatives to leaving that the General Division had identified. Much of this explanation was in reference to a claim of working conditions hazardous to his health and a medical diagnosis of sarcoidosis.

[15] The Claimant did not raise his health concerns as a reason for quitting at any time when the Commission was investigating or determining his claim, or before the General Division. As discussed above, I can only address errors that the General Division may have made in managing the process, applying the law, and assessing the evidence that was before it. To the extent that the Claimant's submissions involve new evidence, I will not be considering that evidence.

Issue 1: Is there an arguable case that the General Division acted in a manner that was biased against the Claimant and thus failed to observe a principle of natural justice?

[16] There is no arguable case that the General Division's actions or decision were biased or would give rise to a reasonable apprehension of bias and constitute a breach of natural justice. In his application for leave to appeal, the Claimant appears to be suggesting that the General Division was biased. He writes, "Looks like General Division (Tribunal) protecting the employer and give the decision favourable to employer." However, his claim of bias (if that is what it is) appears to be based solely on the fact that the decision was unfavourable to him. He

¹ *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41

has not referenced any concern with the manner in which the General Division conducted the hearing, nor has he referred to any adverse inference, finding, or conclusion that the General Division failed to justify, or to anything else that might support his claim of bias.

[17] The General Division weighed all the evidence, as it is required to do, and it reached a decision. The General Division's reasons for accepting certain evidence or preferring it over other evidence are clear and transparent on the face of the decision. The fact that the decision was unfavourable to the Claimant does not mean that the General Division was predisposed to disregard his evidence or that it was otherwise biased and I do not accept that the decision would give rise to a reasonable apprehension of bias.

[18] Natural justice is about fairness of process. It does not just require an impartial decision maker; it also requires that a party have an opportunity to be heard and to know the case against him or her. However, the Claimant has not raised any other concern with the fairness of the process (beyond his claim that the General Division member showed favoritism in its decision). I have not discovered any issues of procedural fairness in the manner in which the appeal was heard.

[19] There is therefore no arguable case that the General Division was or might reasonably be perceived to be biased, or that it failed to observe any other principle of natural justice under s. 58(1)(a) of the DESDA.

Issue 2: Is there an arguable case that the General Division made an error of law?

[20] There is no arguable case that the General Division erred in law. The Claimant has not suggested that the General Division cited the wrong legislative or regulatory provision, or that it wrongly interpreted or applied the law. Nor is such an error apparent to me. The General Division determined that the Claimant had voluntarily left his employment and it applied the test at s. 29(c) of the Act to determine whether he had had "just cause" for doing so. In doing so, the General Division had regard to the various circumstances asserted by the Claimant and it applied the case law appropriately to assess the applicability of those circumstances. The General Division had regard to all the circumstances in determining that the Claimant had other

reasonable alternatives to leaving and in therefore finding that he did not have just cause for leaving.

[21] The Claimant has not identified an arguable case that the General Division erred in law under s. 58(1)(b) of the DESDA.

Issue 3: Is there an arguable case that the General Division based its decision on an erroneous finding of fact that was made in a perverse or capricious manner, or without regard for the material before it?

[22] There is no arguable case that the General Division made an erroneous finding of fact in a perverse or capricious manner, or without regard for the material before it. The Claimant has raised a novel circumstance in relation to his health concerns, but this is new evidence that was not before the General Division and therefore, I cannot fault the General Division for failing to consider it.

[23] I appreciate that the Claimant does not agree with the General Division's findings or its conclusion, but he has not identified any particular piece of evidence that was ignored or misunderstood by the General Division. The General Division is charged with weighing evidence and finding facts, and I can interfere only if a finding of fact is "perverse" or "capricious" or if the General Division ignores or misapprehends the evidence. I have reviewed the record fully, and nothing in the record suggests to me that the General Division made any such error in assessing the evidence.

[24] The Claimant has not made an arguable case that the General Division made an erroneous finding of fact in a perverse or capricious manner or without regard for the material before it under s. 58(1)(c) of the DESDA.

[25] The Claimant has no reasonable chance of success on appeal.

CONCLUSION

[26] The application for leave to appeal is refused.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	R. Z., self-represented
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