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

Citation: *V. G. v. Canada Employment Insurance Commission*, 2018 SST 189

Tribunal File Number: AD-17-962

BETWEEN:

V. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

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) voluntarily left his employment on December 30, 2016, because of a knee condition whose symptoms were aggravated by his job duties. The Canada Employment Insurance Commission (Commission) disqualified him from regular benefits after concluding that leaving his employment was as not his only reasonable alternative.

[3] The Claimant appealed to the General Division of the Social Security Tribunal. The General Division did not accept that the Claimant's own opinion that it was time for him to quit amounted to "just cause" within the meaning of the *Employment Insurance Act* (Act). It accepted that the Claimant had several reasonable alternatives to leaving his employment, including seeking advice from his physician or his company's health and safety committee, investigating the prospect of a leave of absence or a position suitable to his physical capabilities, or taking sick leave. The Claimant seeks leave to appeal the General Division decision.

[4] In order to grant leave to appeal, I must decide that the Claimant has a reasonable chance of success on appeal. This means that I must find that there is an arguable case that the General Division failed to observe a principle of natural justice, made an error of law, or made an erroneous finding of fact that was made in a perverse or capricious manner or without regard to the material before it.

[5] I am not satisfied that there is an arguable case that the General Division made such an error. The Claimant's natural justice argument appears to be that he should not be compelled to establish that he had just cause for leaving. He suggests that it is unfair that he is not taken at his word when he says he is entitled to benefits. However, he does not suggest that the appeal process was unfair in any way. Therefore, he has not proven an arguable case on an issue of natural justice.

[6] The Claimant also argues that the General Division erred in law on the basis that he believes he established one of the conditions set out in paragraph 29(*c*) of the Act and that he could not be *expected* to meet one of the other conditions. However, the legal test in the Act does not turn on whether the Claimant can establish the existence of certain circumstances, but rather whether he had no reasonable alternative to leaving, having regard to all the circumstances. There is no arguable case that the General Division erred in law.

[7] Finally, the Claimant argues that the General Division ignored his evidence that he had no alternative but to leave his job. However, the record does not support the Claimant's contention that his evidence was ignored. In fact, the General Division's conclusion that the Claimant did not establish that he had no reasonable alternative to leaving was based on the Claimant's own assertion that he quit when he did because he believed it was time to quit. There is no 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 to the material before it.

ISSUES

[8] Is there an arguable case that the General Division failed to observe a principle of natural justice by requiring the Claimant to establish just cause?

[9] Is there an arguable case that the General Division erred in law by not accepting that the Claimant had established certain circumstances in paragraph 29(*c*) and by failing to consider such circumstance(s) as "just cause"?

[10] Is there an arguable case that the General Division based its decision on an erroneous finding of fact without regard to the Claimant's evidence?

ANALYSIS

General principles

[11] 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 apply the law. The law would include the statutory provisions of the Act and the *Employment Insurance 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 are before it.

[12] 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."

[13] Subsection 58(1) of the *Department of Employment and Social Development 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.

[14] Unless the General Division erred in one of these ways, the appeal cannot succeed, even if the Appeal Division would otherwise disagree with the General Division's conclusion and the result.

[15] 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 to appeal and allow the appeal to go forward. A reasonable chance of success has been equated to an arguable case.[1]

[16] Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice by requiring the Claimant to establish just cause?

[17] Natural justice refers to fairness of process and includes procedural protections such as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against them. The Claimant has not raised concerns regarding the adequacy of notice of

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

the hearing, the pre-hearing disclosure of documents, the manner in which the hearing was conducted or his understanding of the process, or any other action or procedure that could have affected his right to be heard or to answer the case. Nor has he suggested that the General Division member was biased or had prejudged the matter.

[18] The Claimant's natural justice argument is directed more to a concern with the manner in which benefits are administered under the Act. Parliament has determined that Employment Insurance benefits are paid out only in certain amounts and under certain conditions and has set out in the Act tests for eligibility for benefits and for disqualification from, or disentitlement to, benefits. Section 30 of the Act dictates that a claimant is disqualified from receiving benefits if they voluntarily leave their employment without just cause. "Just cause" is defined in section 29 to require that the claimant, having regard to the circumstances, must have no reasonable alternative to leaving. Settled case law places the onus on the Commission to show that the Claimant has voluntarily left employment, but places the onus for establishing that there were no reasonable alternatives on the Claimant.

[19] The General Division is required to apply the statutory law and to follow the direction of the courts in its interpretation. The Claimant may feel that it is unfair that he cannot access benefits when he feels he can no longer work, but this has nothing to do with whether the General Division failed to observe a principle of natural justice.

[20] The Claimant has no reasonable chance of success on this ground.

Issue 2: Is there an arguable case that the General Division erred in law by not accepting that the Claimant had established certain circumstances in paragraph 29(*c*) and by failing to consider such circumstance(s) as "just cause"?

[21] As noted above, "just cause" is not made out by the existence of one or more of the circumstances enumerated in paragraph 29(*c*) of the Act. The list of circumstances in paragraph 29(*c*) is a non-exhaustive list of circumstances to be taken into account in determining whether there were reasonable alternatives to leaving. Had the General Division accepted the existence of one or more of the listed circumstances, that circumstance would need to be taken into account in assessing the Claimant's reasonable alternatives.

[22] The circumstance that is of principle concern to the Claimant is found in subparagraph 29(*c*)(iv)—working conditions that constitute a danger to health or safety. He argues that his work duties would have aggravated his knee condition to the point of increased disability, unless he quit. While the General Division made no specific finding that the Claimant's work circumstances constituted a danger to his health or safety, it rejected the sufficiency of his "opinion that it was time to quit" (which related to the aggravation of his condition). In doing so, the General Division implicitly considered whether the circumstances amounted to a danger to the Claimant's health. The fact that the General Division was not satisfied by the Claimant's evidence on this point relates to how the General Division assessed the evidence. It is not an error of law.

[23] So far as the Claimant's reference to "reasonable assurances of another employment in the immediate future" (subparagraph 29(*c*)(vi)), I do not understand the Claimant to be suggesting that the General Division did not take into account the existence of this circumstance. Rather, he seems to consider it unreasonable to expect that such a circumstance could possibly be applicable to someone such as himself. There was therefore neither evidence of a reasonable assurance of another employment nor an argument that any assurance existed. There can be no error in failing to account for a circumstance that does not exist.

[24] Finally, even if the General Division had accepted the existence of circumstances under paragraph 29(*c*), this would mean only that the circumstances would need to be considered. The fact that one of these circumstances may exist does not compel the General Division to the conclusion that the Claimant had no reasonable alternatives. It is not an error of law to hold that a claimant has no reasonable alternative after the circumstances are considered.

[25] I do not find that the Claimant has a reasonable chance of successfully establishing an error of law on appeal.

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

[26] The Claimant argues that the General Division disregarded the effect that his job duties would have had on his health if he had not left his employment, and that it did not consider his age, his physical abilities, and the probabilities of securing employment in the immediate future (presumably in relation to the existence of reasonable alternatives).

[27] It is clear that the General Division was aware of the Claimant's testimony that he had to stand for up to eight hours and that, when he was required to sit, he still had to walk around every 20 minutes. It is also clear that the General Division understood the Claimant to be complaining of a knee issue and that the Claimant believed he needed to quit to prevent further damage.

[28] However, the Claimant had the legal burden of establishing, on a balance of probabilities, that he had just cause for leaving, which means it was up to him to show that there was no reasonable alternative. There was no medical evidence to suggest that his work duties would have, or could have, caused his knee condition to worsen—only the Claimant's non-expert opinion. The Claimant essentially relied on his own judgment that it was time to quit, and on his presumption that he would be terminated anyway if he explored alternatives to quitting with his employer.

[29] The General Division is entitled to give little weight to the Claimant's judgment or "opinion" or to his presumptions. The General Division's job is to weigh the evidence but, even in the absence of contrary evidence, the General Division may find that the Claimant has not provided sufficient or persuasive evidence to establish, on a balance of probabilities, that he had no reasonable alternative to quitting.

[30] I do not find that the Claimant has a reasonable chance of success in asserting that the General Division's decision was made in a perverse or capricious manner or without regard to his personal opinion that he had to quit when he did.

[31] I have reviewed the documentary evidence that was before the General Division as well as the parties' respective submissions, and I have listened to the audio recording of the hearing. I have not identified an arguable case in respect of any other error.

[32] In the result, the appeal has no reasonable chance of success.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	V. G., the Applicant, Self-represented