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

Citation: *S. T. v. Canada Employment Insurance Commission*, 2018 SST 270

Tribunal File Number: AD-17-611

BETWEEN:

S. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: March 26, 2018

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant (Claimant) worked part-time as a dishwasher at a restaurant. Shortly after her last shift on August 9, 2015, she injured her hand. She never returned to work. On October 30, 2015, she was informed by the Respondent, the Canada Employment Insurance Commission (Commission), that she was entitled to sickness benefits but that she would be disqualified from receiving regular benefits because she had left her employment without just cause. The Claimant asserted that she had never quit her job and asked the Commission to reconsider. The Commission maintained its decision in a letter dated January 28, 2016, and the Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed the appeal on July 28, 2017, finding that the Claimant had voluntarily left her employment and that she had reasonable alternatives to doing so. The Claimant is now seeking leave to appeal to the Appeal Division.

[3] Leave to appeal is refused. The Claimant has failed to make an arguable case that the General Division failed to observe a principle of natural justice, erred in law, or 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.

ISSUES

[4] Is there an arguable case that the General Division failed to observe a principle of natural justice?

[5] Is there an arguable case that the General Division based its decision that the Claimant had voluntarily quit without just cause on an erroneous finding of fact without regard for the Claimant’s testimony that the employer was requiring her to work despite her injury?

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 apply the law. The law includes the statutory 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 reach conclusions on the issues that it has to decide, by applying the law to the facts.

[7] The Appeal Division is permitted to interfere with a decision of the General Division only if the General Division has made certain types of errors, which are called "grounds of appeal."

[8] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out 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.

[9] 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.

[10] 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]

[11] On initial review of the Claimant's leave to appeal application, I was not satisfied that the Claimant understood the nature of this appeal or what it was that she needed to establish. I sent the Claimant a letter dated January 4, 2018, asking her to clarify her grounds of appeal. On February 7, 2018, she responded, reiterating her natural justice concern and her belief that the General Division had made an erroneous finding of fact.

Natural justice

[12] In both the original application for leave to appeal and in the Claimant's response to the Tribunal's letter asking her to clarify her grounds of appeal, the Claimant stated that the "EI office failed to judge on a natural justice as an unfit worker." She did not otherwise elaborate.

[13] Natural justice refers to fairness of process and includes procedural protections such as the right to an unbiased decision maker and a party's right to be heard and to know the case against them. The Claimant has not raised any concerns about the adequacy of her notice of the General Division hearing, the pre-hearing disclosure of documents, the manner in which the General Division hearing was conducted, her understanding of the process, or any other action or procedure that could have affected her right to be heard or to answer the case. Nor has she suggested that the General Division member was biased or had prejudged the matter.

[14] The Claimant has not made an arguable case that the General Division failed to observe a principle of natural justice.

Erroneous finding of fact that it without regard for the Claimant's testimony?

[15] Subsection 30(1) of the Act stipulates that a claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause. Paragraph 29(*c*) states that just cause for voluntarily leaving an

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

employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances.

[16] The General Division reached two basic conclusions: it determined that the Claimant had voluntarily left her employment, and that she had done this without just cause. As the General Division noted, the Commission was required to prove that the Claimant had voluntarily left her employment. If that fact can be established, then the Claimant would need to prove that she had just cause.

Voluntary leaving

[17] The undisputed facts include the following:

- The Claimant had sustained a hand injury at some point prior to August 15, 2015, but did not consult a physician for a diagnosis or provide the employer with a medical note/excuse.
- The Claimant was aware of, but did not report for, her scheduled shift on August 15, 2015.
- The Claimant did not have permission to miss her August 15 shift: The employer was either unaware that the Claimant intended to miss her shift, or the employer was aware but refused permission for her to miss her shift.
- The Claimant did not call the employer after August 15, check the work schedule, or report to work again.

[18] The General Division concluded that the Claimant had taken an unauthorized and indeterminate leave without notice to the employer (paragraph 48) and that her actions in taking the unauthorized leave established that she had voluntarily chosen to end her employment. This conclusion is supported on the basis of the undisputed facts alone. Therefore, I do not accept that there is an arguable case that the General Division may have erred in failing to consider that the employer was requiring the Claimant to work despite her hand injury.

"Just cause" for leaving

[19] The Claimant's evidence that her employer was requiring her to work despite her hand injury is relevant to the determination of whether she had "just cause" for leaving. One of the particular circumstances that the General Division is directed to consider is s.29(*c*)(iv) of the Act: working conditions that constitute a danger to health or safety.

[20] However, I do not accept that the General Division ignored or misunderstood the Claimant's evidence. It is clear from reading the decision that the General Division understood the Claimant's evidence that she had a hand injury, that she felt she could not work with her hand injury, and that the employer was not allowing her to take time off to recover. The Claimant has not identified any evidence that was ignored or misunderstood, and I have not discovered any on review of the record.

[21] The General Division weighed her evidence, together with the employer's statements, and ultimately concluded that she did not have just cause because she had reasonable alternatives to leaving. I appreciate that the Claimant disagrees with the manner in which the General Division weighed and analyzed the evidence and with its conclusion, but simply disagreeing with the findings does not establish a ground of appeal under s.58(1) of the DESDA.[2] Nor does a request to reweigh the evidence establish a ground of appeal with a reasonable chance of success.[3] The Claimant has not convinced me that there is an arguable case that the General Division erred in the manner that is required bys.58(1)(*c*) of the DESD Act.

[22] I find that there is no reasonable chance of success on appeal.

[2] *Griffin v. Canada (Attorney General)*, 2016 FC 874.
[3] *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	S. T., self-represented